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Protection regarding Hungary

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AMNESTY INTERNATIONAL SUBMISSION TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS ON NATIONAL REPORTS, THEMATIC GROUPS 2 – HEALTH, SOCIAL SECURITY AND SOCIAL PROTECTION: HUNGARY

This submission seeks to provide additional information to the European Committee of Social Rights (herein the Committee) with respect to its review of Hungary's national report pertaining to the provisions belonging to the thematic group 2 on health, social security and social protection.

Hungary's national report under the theme of social security fails to adequately address the issue of lack of state support for women facing gender-based discrimination in the workplace as documented in the 2020 Amnesty International report *No Working Around it: Gender-based discrimination in Hungarian workplaces*.¹

As part of its examination of gender-based discrimination in the workplace focusing on pregnant women and new mothers, Amnesty found that the social security system also fails to provide adequate support for this group in a number of ways.

The report points out that besides the fact that an unlawful dismissal or no extension to a contract due the employee's pregnancy may have harmful impacts on the physical and mental state of expectant workers, they might also lose entitlement to certain social security family benefits if they do not manage to find another job or their baby is born over 42 days following the termination of their employment (and thus that of the insurance coverage). Finding a job, however, is very difficult in Hungary in advanced stage of a pregnancy. These expectant women are only eligible for universal benefits, such as the maternity support allowance (a one-off payment of HUF 64,125 {EUR 191.14}), the family allowance (a monthly benefit of at least HUF 12,200 {EUR 36.36} for one child) and the childcare allowance (a monthly benefit of HUF 28,500 minus 10% for pension contribution {EUR 84.95} per child). These have not been raised since 2008. As the above benefits for women not meeting the aforementioned criteria are very low comparing with what higher-income women and those in employment can receive, the law disproportionately impacts women with low incomes and those from disadvantaged backgrounds. Moreover, by not providing adequate financial support, the Hungarian law does not comply with the ILO Maternity Convention, which requires that women, who do not meet the conditions to qualify for cash benefits, shall be entitled to adequate benefits out of social assistance funds, subject to a means test.

In addition, the current benefits system discourages men from taking sufficient parental leave with consequential impacts on their partners.

With respect to social security the report recommends the Hungarian government to:

- Amend Government Decree 86/2019 (IV. 23.), to grant competence to the Department for Employment of Government Offices to investigate complaints by individuals concerning their employers' failure to submit the necessary documentation to enable pregnant women to receive sick pay in case of high-risk pregnancy or in-work family benefits (infant-care and childcare subsidies);
- Encourage men to play a bigger role in household tasks and childcare, and that there is a possibility for either parent to take parental leave by a) extending paternity leave to at least 10 working days and make it obligatory

¹ Amnesty International, *No Working Around it: Gender-based discrimination in Hungarian workplaces*, EUR 27/2378/2020, [Hungary: No working around it: Gender-based discrimination in Hungarian workplaces | Amnesty International](#)

and b) making at least two months of the parental leave non-transferable and obligatory for the man in the household, and ensure it is adequately compensated;

- Propose legislation to revise provisions on paternity and parental leave to grant employment protection to fathers taking advantage of these leaves;
- Raise the amount of sick pay for women with high-risk pregnancy for the first 15 days of their sick leave to 70% to reach the level of that for sickness, to be covered by the state (and not the employer);
- Propose legislation to revise Article 40(1) of Act on the Services of the Compulsory Health Insurance System, allowing pregnant women to receive infant-care and childcare subsidies if they had had insurance coverage for at least 365 days over a period of two years prior to the birth of their child, even if they might have lost the insurance coverage over 42 days before the birth due to the termination of their employment relations;
- Increase the monthly amounts of the universal maternity support allowance, family allowance and childcare allowance, which have not increased since 2008, to adequate levels, by ensuring that their yearly rise follows inflation.

Please find attached to this letter, for further consideration by the Committee, Amnesty International's 2020 Amnesty International report *No Working Around it: Gender-based discrimination in Hungarian workplaces*.

We remain at your disposal for further information,

Yours sincerely,

Eve Geddie



Head of Office and Advocacy Director
European Institutions Office
Amnesty International



NO WORKING AROUND IT

GENDER-BASED DISCRIMINATION IN HUNGARIAN WORKPLACES

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Cover photo: *Silhouette of pregnant woman standing by the promenade looking over sky enjoying the beautiful sunset*
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CONTENTS

METHODOLOGY	10
1. BACKGROUND	13
1.1 THE SOCIO-ECONOMIC CONTEXT: SIGNIFICANT REGIONAL DISPARITIES	13
1.2 WOMEN'S EMPLOYMENT AND ITS SOCIAL DIMENSIONS: LACK OF OPPORTUNITY AND EQUALITY	15
1.3 PARENTAL LEAVE AND BENEFITS: A SYSTEM BIASED AGAINST WOMEN	17
2. HUNGARY'S LEGAL OBLIGATIONS	20
2.1 OBLIGATIONS CONCERNING GENDER-BASED DISCRIMINATION	20
2.2 LEGAL REQUIREMENTS CONCERNING GENDER-BASED EMPLOYMENT DISCRIMINATION	21
3. GENDER-BASED DISCRIMINATION IN THE WORKPLACE	24
3.1 DISCRIMINATION BASED ON SEX OR GENDER IN HUNGARY	24
3.1.1 VAGUELY WORDED EXEMPTIONS FROM RESPECTING THE PRINCIPLE OF EQUAL TREATMENT	25
3.1.2 FORMS OF DISCRIMINATION IN THE WORKPLACE	25
3.2 DISCRIMINATION AGAINST PREGNANT WOMEN	27
3.2.1 NO EFFECTIVE PROTECTION FROM DISMISSALS	27
3.2.2 TENDENCY TO DISMISS PREGNANT EMPLOYEES ON SHORT-TERM CONTRACTS OR DURING THEIR PROBATION PERIOD	28
3.2.3 DISREGARDING THE DANGERS OF HIGH-RISK PREGNANCY AND ITS HEALTH-RELATED AND FINANCIAL CONSEQUENCES	31
3.2.4 REFUSAL OF ASSIGNMENTS, TRAINING OR OTHER CAREER DEVELOPMENT OPPORTUNITIES TO PREGNANT WOMEN	33
3.3 DISCRIMINATION AGAINST WOMEN WITH YOUNG CHILDREN	34
3.3.1 DISREGARDED OBLIGATIONS OF THE EMPLOYER WITH RESPECT TO THE EMPLOYEE'S PREVIOUS POSITION FOLLOWING THE EMPLOYEE'S MATERNITY OR PARENTAL LEAVE	36
3.3.2 PRESSURE EXERTED ON FAMILIES TO LEAVE CARING FOR A SICK CHILD TO WOMEN ONLY	38
3.3.3 NOT BEING ALLOWED TO WORK PART-TIME OR REMOTELY	39
4. DOMESTIC REMEDIES	42
4.1 SUBMITTING A COMPLAINT TO THE EQUAL TREATMENT AUTHORITY	43
4.1.1 THE AUTHORITY LACKS HUMAN AND FINANCIAL RESOURCES	43
4.1.2 THE AUTHORITY'S SANCTIONS ARE NOT DISSUASIVE ENOUGH	44

4.2 SUBMITTING A DISCRIMINATION CLAIM TO COURT	45
4.2.1 LOW NUMBER OF CASES	45
4.2.2 COURTS DO NOT CORRECTLY APPLY THE RULES ON BURDEN OF PROOF	48
4.2.3 IMPOSED SANCTIONS ARE NOT DISSUASIVE ENOUGH AND CONTRARY TO EU LAW	49
4.2.4 RECENT CHANGES IN THE COURT SYSTEM	50
5. CONCLUSIONS AND RECOMMENDATIONS	51

EXECUTIVE SUMMARY

“From the moment a female employee announces she is pregnant, the employer looks at her as a ‘ticking bomb’ that will sooner or later detonate.”

Ágnes Repka, human resources expert and employment law advisor, March 2020

Although the law prohibits gender-based discrimination in Hungary, women continue to experience widespread discrimination in the workplace and in the labour market more generally. The discrimination occurs in various forms due to women’s gender and in many cases specifically due to their motherhood.

The current COVID-19 pandemic has hit the Hungarian labour force hard, and further exacerbated this discrimination and gender inequality in the labour market. The health crisis has forced many women to give up their jobs to care for and educate their children as nurseries and schools have been closed. Moreover, as women on average earn less than their partners, and both employers and society expect women to care for children and manage the household, in many families men remain the sole breadwinner. The majority of those who have lost their jobs due to the economic impact of the public health crisis are women who have become fully dependent on their partners or family members. At the same time the pandemic has placed an additional burden on, and put at risk, frontline workers such as health and social care employees, shopkeepers, etc.

This report, for which the research was conducted prior to the COVID-19 pandemic, mainly focuses on gender-based discrimination against pregnant women in employment and women who want to return to work following maternity leave. We use the term gender-based discrimination to refer to instances when a woman is treated less favourably in a direct or indirect manner on the grounds of her sex/gender and/or of being a mother, than any other person with a comparable level of skills and experience and in a comparable position.

This report is primarily based on field research carried out in Hungary between June 2019 and March 2020, when Amnesty International delegates interviewed 40 women who experienced discrimination on grounds of their sex/gender and/or for being a mother, as well as 44 experts including trade union representatives, representatives of civil society organizations, labour rights lawyers and other labour rights experts such as legal experts from the Equal Treatment Authority, and academics. To supplement qualitative interviews, Amnesty International conducted a survey of 266 respondents in the public and private sectors in Hungary to obtain information on women’s experiences of unequal treatment in the workplace, and on remedies they have sought.

Hungary has ratified a range of international and regional human rights treaties that require respect for the principle of non-discrimination and for the equal rights of men and women to the enjoyment of all economic, social and cultural rights. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As a member of the European Union (EU) and the International Labour Organization (ILO), Hungary has also committed to implementing a number of obligations concerning labour rights. These are key legal instruments that prescribe what measures states parties such as Hungary should take to prevent and eliminate employment discrimination on the grounds of sex/gender and motherhood, and to protect workers.

The report finds that one of the key reasons for widespread discrimination against women employees in the labour market is the incomplete transposition of these relevant international and regional human rights obligations into domestic law. As well, laws regulating employment relationships and the law on equal treatment contain several significant loopholes that employers exploit, and in so doing, violate the rights of their employees.

In addition, the Hungarian authorities have failed both to effectively ensure that employers are aware of their legal obligations and to reinforce employers' compliance with the law. At the same time, many of the labour-related measures introduced by the government in recent years have had a particular and disproportionate impact on women employees, especially those who have low socio-economic status and/or are from disadvantaged backgrounds. Other government policies and communications have actively promoted gender stereotyping of women, principally highlighting women's role in raising children and caring for the family. Further governmental measures have associated women solely with family affairs. The Hungarian authorities must take urgent steps to address discrimination in the workplace that many women experience on the grounds of their gender/sex and motherhood.

DISCRIMINATION AGAINST PREGNANT WOMEN

“My employer... explained that my salary was too high, so we could either sign a new contract with a lower salary for me to go on maternity leave and get the benefits, or we should terminate the employment relationship – otherwise the company becomes bankrupt.”

‘Bernadett’, a victim of discrimination due to her high-risk pregnancy, January 2020

Our research found that many employers terminate the employment relationship with expectant women when they learn about their pregnancy, despite protections against such dismissals in the Hungarian Labour Code. One common discriminatory practice is that the employer terminates the contract without notice, alleging inappropriate conduct by the employee – despite the absence of any evidence of such conduct.

Many employers also take advantage of the weak provisions of the law to dismiss expectant workers. For example, both parties can terminate the employment relationship during the probation period without the obligation to provide reasons – a loophole and violation of EU law that must be addressed. Another practice employers often resort to is to not renew the contract of a pregnant worker when it comes to an end following a project, even though continued employment was originally foreseen and justified. While these discriminatory practices may have harmful impacts on the physical and mental state of expectant workers, women could also lose entitlement to certain social security family benefits if they do not manage to find another job or their baby is born more than 42 days after termination of their employment (and lose also the accompanying insurance coverage). They would in this case receive only very low-level universal family allowances. This problem is compounded by the fact that finding a job is very difficult in Hungary in advanced stage of pregnancy, as both victims of gender-based discrimination and experts told Amnesty International.

Expectant women with a high-risk pregnancy are in an even more vulnerable situation. In these cases, as it is uncertain how long the employee remains capable of working before her maternity leave, many employers resort to the easy but regressive option of terminating the employment so they can look for a replacement worker able to carry out the duties.

DISCRIMINATION AGAINST WOMEN WITH YOUNG CHILDREN

It should be acknowledged that since 2010 the Hungarian government has taken steps to improve women's employment, with a particular focus on those with young children. For example, the government has been increasing the number of nursery places across the country, amended the Labour Code allowing women to work part-time covering 20 hours per week until their child reaches four years of age (or six if the woman raises three or more children), and introduced tax breaks for families depending on the number of children.

While these measures have somewhat helped women to reconcile work and family life, they have not significantly aided their return to the labour market following child-related leave, and to address workplace discrimination. Furthermore, very few steps have been taken to encourage men to share childcare, household and other care duties with women, or to change stereotypical perceptions of gender roles. Some steps, among others, include additional days of paid holiday to care for a child, the opportunity for men to take parental leave and five working days (or seven in case of twins) of paternity leave, but many men do not take advantage of these leaves. Caring for a child is still considered the woman's main task not only by society, but also by employers.

The Labour Code stipulates that employers may not terminate the employment relationship by notice during maternity leave, and during a leave of absence taken without pay to care for a child. In addition, the employer should take the employee back into her original role or must offer an equivalent role if the previous position is no longer available. As employees are often not acquainted with these obligations and employers choose to ignore them, therefore, often this does not happen. Another significant disparity is that although by law employers are required to offer wage adjustments after child-related leave, there is no legal sanction should they fail to do so. This disparity is exacerbated by the fact that employees are often not aware of pay raises in their workplace given an inherent culture of secrecy around salaries in Hungary.

The report also describes how the state and employers exert pressure on families so that only women, not men, care for sick children. By law, working parents whose child is sick and is younger than twelve years of age can take sick leave and are entitled to statutory 'sick pay to care for a child', if they are insured and pay health insurance contributions. In reality, mostly women take this sick leave. Amnesty International interviewed several women whose employers did not tolerate this type of absence and dismissed them. While both society and employers consider women the primary caregivers and childrears, women are punished in the workplace for carrying out these tasks.

The report finds in addition that this type of discrimination can also occur against men. As one woman explained, her husband was bullied by his colleagues and manager when he did not take part in optional parties following team events, due in part to the fact that within a space of six months he had to stay at home twice with their sick child.

“My husband was working among six men, who all held the view that women should care for sick children. ... They pestered him a lot, and if he hadn't quit, we had the impression that they would have continued bullying him until he would resign – or come up with a reason to dismiss him.”

'Veronika', whose husband experienced discrimination, 24 February 2020

This report also identifies unfair treatment regarding part-time and remote working, and finds that many companies have had difficulties with implementing the law concerning flexible working. At the employee's request the employer can reduce their working hours from full to part-time (20 hours per week) following the employee's return to work from maternity or parental leave; this arrangement can occur before the child reaches four years or in the case of three or more children until the youngest reaches six. While the law allows only this particular form of part-time employment, many employers refuse to accommodate employees' request for it, as Amnesty International learned from interviews with women in the public and private sectors.

With regard to remote working, many employers have held negative attitudes towards it, as they do not trust the employee's commitment and productivity while working outside the office – despite in most cases no evidence to support this lack of trust. This attitude may change due to the current COVID-19 pandemic, which has required many companies to experiment with remote working on a large scale, to survive and to keep employees safe.

ACCESS TO REMEDIES

Besides the fact that employees are often not aware of their rights and the respective obligations of their employers, Amnesty International's research also found that many women do not seek reparation for the harm they have suffered. One of the key reasons is that victims of gender-based discrimination are, once again, not familiar with potential avenues for remedies and thus do not pursue them. Awareness of anti-discrimination legislation and the related legal remedies remains relatively low, as a representative study found, with only 40% of people found to be familiar with the Equal Treatment Authority and only just over half – 51% – under the impression that there is a law to protect against discrimination.

Our research shows that women often fear retaliation for reporting discrimination both internally to their employer and through external legal avenues, such as launching a complaint with the Equal Treatment Authority or taking a case to court. In addition, women employees and experts interviewed by Amnesty International stated that while internal complaint mechanisms often do not exist or complaints are not properly investigated and acted upon, accessing external legal remedies leads to legal and practical barriers that deter victims of gender-based discrimination from seeking and obtaining justice.

Submitting a complaint to the Equal Treatment Authority

One of the legal avenues that victims of gender-based discrimination can choose is making a complaint to the Equal Treatment Authority, an independent national body responsible for monitoring the implementation of the principle of equal treatment. Although the Authority in its decisions can sanction perpetrators in the procedure, those punitive measures are not sufficiently proportionate regarding the harm suffered by the victim and dissuasive enough with respect to deterring future violations. If the Authority establishes an infringement of the principle of equal treatment, the most serious sanction it can impose is to fine the violator. This fine, however, is paid to the state, not to the victim. The only instance in which the victim can obtain real compensation is if the Authority concludes an amicable settlement between the parties and the employer voluntarily chooses to compensate the victim.

Besides investigating complaints, the Authority has a remit to start proceedings without receiving notice of a particular discrimination case and to organize trainings on equality and non-discrimination. Due to constrained human and financial resources, however, the body cannot carry out these functions effectively.

Submitting a claim to court

Hungarian law also allows victims of alleged violations of the principle of equal treatment to take a case to court, even if there is an ongoing complaint with the Equal Treatment Authority. Most individuals who seek remedy choose this legal option, as it can provide real reparation for victim, including compensation and stronger sanctions. However, court proceedings also have shortcomings.

Our report found that court procedures are expensive due to legal representation costs – claimants need to hire an employment lawyer. Those who cannot afford legal representation can request state-funded legal aid, but the means test threshold for eligibility is very low.

If discrimination results from unlawful termination of employment, many victims decide not to make a claim, as the amount of compensation payable is limited to a maximum of the equivalent of twelve months' pay. For this amount of money, it is often not worth the victim starting legal proceedings, given the costs they can incur and the fact that lawsuits can last up to one-and-a-half years at first instance only.

The fact that proving discrimination is very difficult compounds these barriers. The law foresees that the burden of proof rests with the defendant, i.e., the employer, to demonstrate that discrimination did not occur. Actual practice, however, contradicts the law as often courts require the claimant, i.e., the employee, to prove that discrimination has occurred.

RECOMMENDATIONS

In light of the above findings and conclusions Amnesty International makes the following recommendations (a full list can be found at the end of the report):

The Ministry of Innovation and Technology should urgently:

- Encourage men to play a bigger role in household tasks and childcare by a) extending paternity leave to at least 10 working days and make it obligatory, as per the new EU directive on balancing work and family life, and b) making at least two months of the parental leave non-transferable and obligatory for the man in the household, and ensure it is adequately compensated.

- Propose legislation to amend Article 61(3) of the Labour Code and relevant provisions of Act on Civil Servants of Public Service and of Act on the Legal Status of Public Servants to allow women and men to work part-time also covering 30 or 35 hours per week, including the opportunity for flexible working time until the child reaches the age of four (or six in case of three or more children).
- Incentivize companies to employ women with children and to introduce flexible working conditions, by a) reinstating the incentive that allows companies to employ two part-time staff in a full-time position with the benefit of not paying 'social contribution tax' for them, and b) eliminating the complete payment of social contribution for women in part-time or full-time positions for the first two years and keeping the 50% discount for that payment, but extending it to the full salary.

The Ministry of Human Capacities should urgently:

- Increase the monthly amounts of the universal maternity support allowance, family allowance and childcare allowance, which have not increased since 2008, to adequate levels, by ensuring that their yearly rise follows inflation.

The Ministry of Justice should urgently:

- Improve access to legal remedies for employment discrimination by amending the rules for exemption from court fees to also fully or partly cover legal representation fees, according to a means-test.
- Propose legislation to increase the level of reparations that can be claimed in court.

The Parliament should urgently:

- Strengthen the Equal Treatment Authority by increasing its yearly budget to undertake more intensive outreach, promotion and training activities, and to increase its legal personnel to be better able to investigate complaints.
- Improve the remedies for discrimination, for instance by giving the Equal Treatment Authority the power to award exemplary compensations to be paid to the claimant.

Employers in all sectors should:

- Introduce equal opportunity plans, take steps to achieve their objectives and targets, and monitor compliance.
- Conduct obligatory equality, diversity and discrimination courses for every newcomer, in particular managers, including training on gender-based discrimination, and increased trainings for managers on this issue.
- Develop an effective, easy-to-understand and easily accessible complaint reporting procedure that is known to employees, and also safe and anonymous, thereby reducing the risk of retaliation against complainants that seek to effectively investigate and sanction gender-based discrimination issues and incidents.
- Accommodate more flexible working conditions that meet the need of employees with childcare responsibilities and include these conditions in local collective working agreements.

METHODOLOGY

TERMINOLOGY

In this research, we use the term gender-based discrimination to refer to instances when a woman is treated less favourably in a direct or indirect manner on the ground of her gender or of being a mother, than any other person with a comparable level of skills and experience and in a comparable position. By indirect discrimination we mean when a measure is seemingly neutral and objective, but in reality, it results in a considerably larger disadvantage to those with the above-mentioned protected characteristics. An example of this could be when an employer grant bonuses only to employees who work full-time. This means that those who work part-time cannot enjoy this benefit regardless of their performance at work. As there are mainly women who work part-time, they are disproportionately at a disadvantage by this policy.

GEOGRAPHICAL FOCUS

Amnesty International sought to understand whether different discriminatory patterns are present in different parts of the country which are quite distinct from each other. Therefore, for its research and analysis, it chose to focus on a variety of locations, including Budapest and following counties: Baranya (in the Southern Transdanubia region), Békés (in the Southern Great Plain region), Borsod-Abaúj-Zemplén (in the Northern Hungary region), Győr-Moson-Sopron (in the Western Transdanubia region), and Fejér and Veszprém counties (in the Central Transdanubia region). These counties have different economic characteristics, their labour markets have distinct features and in consequence, their inhabitants often have different life experiences and socio-economic status.¹ Most of the interviews were conducted with people from these regions, but our research covered the whole country.

DATA COLLECTION: INTERVIEWS, SURVEY AND SECONDARY LITERATURE

Amnesty International interviewed different stakeholders and also conducted a non-representative survey.

Between September 2019 and March 2020, we interviewed:

- 1) 40 individuals in semi-structured, individual or small group interviews who experienced discrimination in a direct or indirect manner on grounds of their gender or of being a mother.

With the help of civil society groups and trade union representatives, we interviewed women who were willing to share their experience about gender-based discrimination. Beyond the 40 individuals, we also interviewed women who were victims of other forms of discrimination not based on gender or who were unfairly treated, but not discriminated against by their employers. We have used alternative names for women we spoke with to protect their anonymity. Amnesty International explained the above-mentioned definition of gender-based discrimination to interviewees and asked questions about potential discrimination women experienced on the grounds of their sex/gender or of being a mother in their workplace, any support they received and whether they sought any remedies and the outcome.

- 2) 44 experts in individual or small group interviews, including trade union representatives, representatives of civil society organizations, labour rights lawyers and other labour rights experts, including legal experts of the Equal Treatment Authority, experts and academics working on gender equality.
- 3) Amnesty International sent requests for interviews to employer organizations (such as the Confederation of Hungarian Employers and Industrialists, National Association of Entrepreneurs

¹ See details on the different regions in the Background section.

and Employers and Pécs-Baranya Chamber of Commerce and Industry), but those requests were not answered or were only briefly acknowledged, and no meeting was offered.

- 4) Despite several requests for an interview, Amnesty International spoke to only representatives of two local governments (that of the Municipality Offices of Békéscsaba and Pécs cities) and no representatives of central public institutions, including relevant ministries.

Amnesty International sent letters requesting meetings to the Ministry of Human Capacities, Ministry of Finance, the Regional Government Office of Borsod-Abaúj-Zemplén, Békés and Baranya counties, the Municipality Offices of Miskolc, Békéscsaba and Pécs cities. We sent a list of questions to the Ministry of Human Capacities and the Ministry of Finance and received a comprehensive response from the former, which has been incorporated in this report.

To supplement the qualitative interviews, Amnesty International conducted a survey. Its purpose was to obtain information from women working in the public and private sectors in Hungary about (i) whether their workplaces do enough to protect them from gender-based discrimination in the workplace, (ii) whether they have experienced gender-based discrimination at work, particularly linked to having children, and (iii) whether they have sought remedy for the same.

The survey was mostly distributed through trade unions that represent workers across all types of sectors in Hungary. The survey was not intended to give Amnesty International statistically representative data but had the following aims:

- 1) It gave Amnesty International a better sense of the nature and scale of the problem of gender-based discrimination, which we have reflected in the report.
- 2) It showed Amnesty International why people seek or don't seek remedies and what difficulties they face in relation to these remedies.
- 3) It put Amnesty International in touch with women who have experienced discrimination and who were willing to have more detailed discussions with us about their experiences.

We received 266 answers to the survey. The majority of respondents were between 36-45 years of age (45.5%); most of them live in the capital (29.7%) or in a city (25.6%) or a city with county rights² (26.7%); and have a college or university degree (63.9%). 45.9% of respondents work in the public sector and 36.1% in the private sector.

Furthermore, this report is based on extensive desk research, including: (a) analysis of laws and policies concerning the labour market and employment rights in the public and private sector, the social security system and state benefits for families, and changes to these laws in the past ten years; (b) comparison of the above laws and policies with relevant directives of the European Union (EU), International Labour Organization (ILO) conventions and recommendations and other international human rights treaties on women's rights, gender equality, the prohibition of discrimination and the right to favourable and just working conditions; and (c) review of secondary literature, including governmental and non-governmental studies on gender equality, gender-based discrimination in the workplace and the Hungarian labour market, and research reports by other international civil society organizations and UN treaty bodies.

SCOPE

This report focuses on the experiences of gender-based discrimination of pregnant women in employment and women who want to return to the labour market following maternity leave. The focus was chosen following initial desk research and conversations with gender and employment law experts, which highlighted the widespread discrimination the above groups face as well as lack of effective remedies despite the legal prohibitions that do exist. This is particularly worrying in a country which has incrementally rolled back labour rights and women's rights, whilst promoting policies supporting families, often at the expense of women. The report does not comment on the gender-based discrimination experienced by men, nor on discrimination on other grounds, such as age, disability or ethnicity. However, the report does acknowledge and, in some instances, illustrates some of the difficulties that women belonging to minority groups or women with different social status face, highlighting the intersectional nature of discrimination.³

Whilst providing some negative examples of how private sector companies or public institutions discriminate against women employees who are pregnant or with young children, the aim of the report is to highlight that discriminatory practices can occur across all sectors and industries and at every level.

² Cities with county rights (in Hungarian "megyei jogú város") are cities that have the equivalent competences and duties of a county. These encompass 18 county capitals and an additional five cities.

³ See text box on Intersectional discrimination on page 27.

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1. BACKGROUND

Gender-based discrimination including in the employment sector is supposed to be outlawed in Hungary. This is based on both the country's membership of various international and regional bodies such as the European Union, the Council of Europe and the International Labour Organization, as well as its ratification of a range of international and regional human rights treaties. These obligations make clear that such discrimination is not permissible and that victims should be able to secure a remedy for any violations and abuses.⁴ The Fundamental Law (Hungary's constitution) acknowledges these obligations by stating that "in order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law...[and] accept the generally recognised rules of international law".⁵ Specifically, equality between women and men is enshrined in the Fundamental Law⁶, and both Hungary's Labour Code and equal treatment legislation⁷ prohibit gender-based and other forms of discrimination.

However, in reality women routinely face less favourable treatment than their male counterparts as their rights to work and to the enjoyment of just and favourable conditions of work are far too often violated in the workplace.

Gender-based discrimination occurs in all forms of employment relations, across different sectors. Such treatment of women needs to be seen within the wider economic and societal context and associated with long term structural issues including the respective stereotypical roles that continue to be assigned to women and men in society. This is also reflected in the state social security system covering both employed and unemployed individuals. This section describes the socio-economic context enabling such discrimination.

1.1 THE SOCIO-ECONOMIC CONTEXT: SIGNIFICANT REGIONAL DISPARITIES

The end of Socialist rule in 1989-1990 completely transformed not only the political system of Hungary, but the structure of the economy and society too. With the introduction of a much more market orientated economy, the privatization of state-owned companies and the influx of foreign investment, greater regional disparities and inequality between societal groups have emerged, such as between individuals with higher education and lower educational background, and between people with high income (such as entrepreneurs and corporate executives) and those with low income.⁸ Those regions with the most favourable economic conditions and more developed infrastructure have been best placed to attract this new capital. The economic crisis of 2008-2009 hit Hungary particularly severely even when compared to other Visegrad

⁴ See Chapter 2. of the report on Hungary's legal obligations.

⁵ Sections E and Q of Hungary's Fundamental Law of 2012, available at: http://njt.hu/cgi_bin/njt_doc.cgi?docid=140968.376083. (Fundamental Law)

⁶ Article XV of Hungary's Fundamental Law states that "Women and men shall have equal rights" and specifies that sex is among the prohibited grounds of discrimination.

⁷ Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, at: <https://net.jogtar.hu/jogszabaly?docid=A0300125.TV>. (Equal Treatment Act)

⁸ Hungarian Central Statistical Office (in Hungarian 'Központi Statisztikai Hivatal' or KSH), *Magyarország 1989–2009, A változások tükrében*, 2010, pp.10-11., at: https://www.ksh.hu/docs/hun/xftp/idoszaki/mo/mo1989_2009.pdf) and Friedrich-Ebert-Stiftung (FES), *Regime change, democracy and the Hungarian society*, 2016, pp. 18-19. at: <https://library.fes.de/pdf-files/bueros/budapest/13268.pdf>. (FES, *Regime change, democracy and the Hungarian society*)

countries. Hungary took several years to recover, and disparity between different regions remained and deepened.⁹

With its agglomeration and a thriving commuting zone in the surrounding Central Hungary region, Budapest has not only become the economic powerhouse of the country, but also a knowledge and innovation hub. Before the COVID-19 pandemic hit the country, it produced about 36% of the country's GDP and employed 18.9% of the working population¹⁰. Outside Budapest, the country has two developed and economically high-performing regions, Western Transdanubia and Central Transdanubia. Significant foreign direct investment over the last decade into those two regions, especially into manufacturing, spurred rapid development.¹¹ These business hubs attract a high number of workers from across the country and support a significant number of Hungarian small and medium-sized enterprises. Due to the good supply of jobs in these regions, the unemployment rate has been the lowest in the country, amounting to 1.7% and 1.9% in the Western Transdanubia and Central Transdanubia regions respectively, followed by 2.1% in Budapest, before the pandemic broke out. This is compared to 4.5% of unemployment in the Southern Transdanubia and Northern Hungary regions, 6.6% in Northern Great Plain and 3.9% in Southern Great Plain, in the same period.¹² These remaining four regions are among the least developed in the entire European Union (EU); and have experienced little growth in the last decade.¹³ Besides some more dynamic cities with county rights¹⁴, most county seats and regional centres in these regions remain weak, with underdeveloped transport routes linking them together.¹⁵

Significant income differences also persist between regions.¹⁶ This is due to the reality of different economic development of regions and the government's aim to balance labour shortage and shortage of job opportunities in different parts of the country. Moreover, income inequalities between the richest 20% and the poorest 20% of the population have increased over the past decade: the income of the richest 20% was 4.4 times higher in 2018 than that of the poorest 20%, up from 3.6 times higher in 2008.¹⁷ This can be explained by changes in the tax and benefit system, such as the introduction of the flat-rate tax system, that favoured the upper deciles of the income distribution.¹⁸

Hungary also has a very strong rural-urban divide with regards to its economic performance, income distribution and welfare. 71.4% of the population lives in urban areas and 28.6% of inhabitants are rural.¹⁹ The rural areas, which have a large number of very small settlements, often struggle with degrading infrastructure, scarce job opportunities and depopulation.²⁰ Travel to neighbouring cities or towns for work for those without a car is often difficult, as public transport is often limited to a few rural bus and intercity coach services, restricting access to job opportunities. In addition, because many of the villages cannot afford to maintain childminding facilities, those who have children can find it even harder to arrange for childcare, further impacting upon their ability to take on a job. These difficulties particularly impact women, if their extended family does not live close by or they are still active in the labour market. As a result, the concentration of poverty and social exclusion is significant in these areas.²¹ The at-risk of poverty rate of

⁹ Hungarian Central Statistical Office, *Magyarország 1989–2009, A változások tükrében*, pp.52-54., and FES, *Regime change, democracy and the Hungarian society*, pp. 18-19.

¹⁰ The data reflects the rate of employed people in the third quarter of 2019. Hungarian Central Statistical Office dataset on the Number of employed people, available at: https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_qlf021g.html.

¹¹ European Commission, *Country Report Hungary 2019, 2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011*, (COM(2019) 150, 27.2.2019, pp. 12., available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019SC1016&from=EN>, (EC, *Country Report 2019, European Semester*).

¹² The data reflects the unemployment rate in different regions in the third quarter of 2019 and comes from the following dataset: Hungarian Central Statistical Office, dataset on Unemployment rate (%), available at: https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_qlf027g.html.

¹³ EC, *Country Report 2019, European Semester*, pp. 12., and Hungarian Central Statistical Office, *Economy of the regions*, pp. 1., at: <https://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/regiok.pdf>.

¹⁴ See footnote nr. 2 on cities with county rights.

¹⁵ EC, *Country Report 2019, European Semester*, pp. 12.

¹⁶ Hungarian Central Statistical Office, Standard of living of households in 2018 (own translation), available at:

<https://www.ksh.hu/docs/hun/xftp/idoszaki/hazteletszinv/2018/index.html#section-6>, and also EC, *Country Report 2019, European Semester*, pp. 12.

¹⁷ European Commission, *Country Report Hungary 2020, 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011*, SWD/2020/516, 26.2.2020, pp. 29., available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0516&from=EN>, (EC, *Country Report 2020, European Semester*).

¹⁸ EC, *Country Report 2020, European Semester*, pp. 29.

¹⁹ United Nations dataset on the World Urbanization Prospects: The 2018 Revision, Annual Percentage of Population at Mid-Year Residing in Urban Areas, at: https://population.un.org/wup/Download/Files/WUP2018-F21-Proportion_Urban_Annual.xls.

²⁰ EC, *Country Report 2019, European Semester*, pp. 6.

²¹ EC, *Country Report 2020, European Semester*, pp. 29.

unemployed people increased in the period since 2007 (from 46% of the total numbers of unemployed to 53.6% in 2019).²²

In its 2019 country report on Hungary, the European Commission found that although there have been recent policy initiatives, such as improving urban transport systems in many parts of the country, expanding and developing the road and rail networks²³ to strengthen larger cities and improve quality of life in villages; a more strategic and holistic approach is needed to advance underdeveloped territories. Complex measures with social, economic and cultural dimensions are required.²⁴

1.2 WOMEN'S EMPLOYMENT AND ITS SOCIAL DIMENSIONS: LACK OF OPPORTUNITY AND EQUALITY

“We would like it if our daughters viewed giving birth to our grandchildren as the highest quality of self-realization.”

Speaker of the Hungarian Parliament, December 2015²⁵

Women's employment has since the socialist era tended to be very closely dependent on the economic needs of Hungary. When the economy required more women to enter the labour market, they were encouraged to do so for example through the establishment of childcare facilities and on-site kindergartens by companies; in recession, however, women were encouraged to return to the home through the introduction of full-time motherhood and by extending child-related leaves.²⁶

During the socialist era, the country strove for full employment and those who refused to work could be imprisoned.²⁷ On the positive side, the egalitarian approach of the socialist state to men's and women's economic and social participation provided women with comparable level of access to education and employment to those of men, and special protections in the field of maternity and child care.²⁸ However, the changes ushered in by the 1989-90 transition had negative impacts for women. The transition to a free market economy, the process of privatization and influx of foreign investment brought an end to state-owned enterprises and factories, with many closing down or being restructured. This led to mass dismissals in many sectors of the economy and thus, to a high level of unemployment. Workers with vocational training qualifications and unskilled workers were hit hardest by these changes, with many of them not being able to find other work due to their skillset or the particular region they were living in. A high number of women belonged to these latter groups. In this context there was a trend towards women resuming their unpaid domestic role in the home.²⁹

²² Statistics from Eurostat, At-risk of poverty rate of unemployed persons by year and territory, at: <https://ec.europa.eu/eurostat/databrowser/view/tesem210/default/table?lang=en>. The indicator measures unemployed persons (aged 18 year or over) with an equivalized disposable income below the risk-of-poverty threshold as a % of total unemployment.

²³ European Commission, *European Structural and Investment Funds Factsheet – Hungary*, at: https://ec.europa.eu/regional_policy/sources/policy/what/investment-policy/esif-country-factsheet/esi_funds_country_factsheet_hu_en.pdf, and also European Commission, *Cohesion Policy and Hungary Factsheet*, at: https://ec.europa.eu/regional_policy/sources/information/cohesion-policy-achievement-and-future-investment/factsheet/hungary_en.pdf.

²⁴ EC, *Country Report 2019, European Semester*, pp. 6.

²⁵ HVG.hu, “Kövér és az unokaszülés”, 14 December 2015, at: <https://hvg.hu/velemeny.nyuzsog/20151214>.

²⁶ Anikó Gregor, *Nem vész el, csak átalakul?, Kísérlet a neoliberais neopatriarchátus fogalmának magyarországi alkalmazására*, in the journal, in *Fordulat* 24, 2018, at: https://epa.oszk.hu/02100/02121/00022/pdf/EPA02121_fordulat_2018_24_109-133.pdf. (Gregor, *Nem vész el, csak átalakul?*) and also Dr. Éva Göndör, *Munka és család a munkajog tükrében*, pp. 36., at: <https://dfk-online.sze.hu/images/egyedi/monogr%C3%A1fi%C3%A1k/Gondor%20%C3%89va.pdf>. (Göndör, *Munka és család a munkajog tükrében*)

²⁷ Gabriella Mohai, *Eötvös Loránd Tudományegyetem, Büntetőeljárásjogi és Büntetésvégrehajtási Jogi Tanszék, „Élő történelem”, azaz közérdekű munka büntetés - tegnap, ma és holnap*, pp 266-267., at: http://epa.oszk.hu/02300/02363/00019/pdf/EPA02363_THEMIS_2013_jun_260-280.pdf, and NLC.hu, “Közveszélyes munkakerülők – Amikor büntették a munkanélkülieket”, 10 November 2017, available at: <https://nlc.hu/magyarorszagkul/20171110/kmk-kozveszelyes-munkakerulo-torveny-buncselekmey-retrol>.

²⁸ UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to Hungary*, A/HRC/35/29/Add.1, 21 April 2017, available at: <https://undocs.org/en/A/HRC/35/29/Add.1>. (HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*)

²⁹ Friedrich-Ebert-Stiftung, Dr. Dorottya Szikra, *Austerity Policies and Gender Impacts in Hungary*, 2013, pp. 8-9 and 11., at: <https://library.fes.de/pdf-files/bueros/budapest/10836.pdf>. (FES, *Austerity Policies and Gender Impacts in Hungary*)

In the past 30 years, while overall employment rates have increased gradually, apart from during and in the immediate aftermath of the economic crisis of 2008-09, the employment rate of women (62.3%) is still far below that of men (76.3%).³⁰ Increasing women's participation in the labour market has been a government priority set out in its National Strategy for the Promotion of Gender Equality of 2010-2021.³¹ In recent years, women's employment rate has indeed increased, which can mainly be attributed to the opportunity for women to return to work after their child reaches six months of age, and still receive childcare benefits.³² However, the employment rate of women with children below the age of 12 years is significantly below that of women without children.³³ As studies suggest, this is due to several factors, such as many women deciding to go on a long child-related leave of three years³⁴ and then finding it hard to return to work; the limited number of flexible and part-time work opportunities; the lack of quality childcare facilities; and the disproportionate allocation of unpaid care duties to women.³⁵

During the last 18 years, successive Hungarian governments have failed to adequately prioritize women's rights, in particular, to advance their employment rights and workplace equality with men.³⁶ Since 2010, Authorities have rather put emphasis on families and the need to boost fertility rates. To this end, they have prioritized policies promoting benefits for families thereby making it easier for women to stay at home with their children.³⁷ Only in the last few years, authorities have moved to facilitate women's return to the labour market based solely on the economic necessity to increase the workforce. However, the government has failed to accompany this with adequate policies and measures to encourage companies to employ more women with young children. As a result, women still struggle to balance work and family life, especially due to the lack of flexible working conditions. In the EU, Hungary has the third lowest rate of part-time workers – 4.2% in 2018 compared to an EU 28 average of 19.2%. In relation to working women, only 6.3% of them have a part-time job, compared to an EU average of 31.3%.³⁸

Although the majority of Hungarian families rely on the incomes of both partners, given that most women earn less than their partners, they often become financially dependent on them.³⁹ The difference in their income can be explained by various factors, including the fact that the Hungarian economy is characterized by horizontal and vertical occupational gender segregation. In the following sectors, women's employment is very high: 75.6% of all people employed in education are women, in the healthcare sector women's ratio is 79.4%; while in retail 67.33% of all workers were women in 2019.⁴⁰ As more women gradually entered these sectors, the wages started decreasing and the professions devaluating; in consequence these professions became less appealing to men.⁴¹ This can be explained by underlying sex/gender discrimination and the perception that women's work is worth less than that of men.⁴² Moreover, women are often stuck in lower-level positions, especially following their return from maternity leave, when they may even be demoted. Both these phenomena play a strong role in the existing gender wage gap of 14.2%, which according to the latest reports widened in the course of 2019.⁴³

The unequal distribution of household tasks within families also contributes to the fact that women cannot return to the labour market, have lower paid jobs and become financially dependent on their partners. The traditional gender stereotypes of women are deeply rooted in Hungarian society, which still considers women

³⁰ The numbers are based on the OECD Employment rate dataset from 2018, Total, % of working age population, <https://data.oecd.org/emp/employment-rate.htm>.

³¹ Government Resolution 1004/2010. on the National Strategy for the Promotion of Gender Equality – Directions and Goals 2010-2021, at: <https://ec.europa.eu/migrant-integration/index.cfm?action=media.download&uuid=2A00B5EB-00E8-5ABD-610BA6798F7A21FE>.

³² HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp. 9. This is policy called GYED Extra.

³³ Köllő János, *Women in the Hungarian Labour Market – Trends in the past ten years*, 2018, in: *The Hungarian Labour Market 2018*, pp. 57-58. and Centre for Economic and Regional Studies, Hungarian Academy of Sciences, *The Hungarian Labour Market 2018, Pocketbook: Time series from the political transition until nowadays*, 2019, pp. 11-12., Figure 27-31.

³⁴ See the next subsection for more details on child-related leaves.

³⁵ HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp. 9.

³⁶ *FES, Austerity Policies and Gender Impacts in Hungary*, pp. 9. and also Magyar Női Érdekvédelem Szövetség, *A Magyar Női Érdekvédelem Szövetség közpolitikai ajánlása*, 2016, pp. 49., at: http://noierdek.hu/2/wp-content/uploads/2013/06/Ajanlas_2016_2-kiadas_vegleges.pdf.

³⁷ *Ibid* and HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp 20.

³⁸ Based on EUROSTAT dataset from 2018: Part-time employment as percentage of the total employment, by sex, age and citizenship (%), available at: <http://bit.ly/eurostat-part-time-employment>.

³⁹ Göndör, *Munka és család a munkajog tükrében*, pp. 128.

⁴⁰ Own calculation based on the following dataset: Hungarian Central Statistical Office, The number of employees by sex, sector and economic activities (own translation), available at: https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_qlf005c.html?down=227.

⁴¹ *A Magyar Női Érdekvédelem Szövetség közpolitikai ajánlása*, 2016, pp. 60. and also Lipták Katalin – Matiscsákné Lizák Marianna, *A kisgyermekes nők foglalkoztatási helyzete és lehetőségeik*, 2018, in: *Vezetéstudomány / Budapest Management Review*, pp. 43., at: <http://unipub.lib.uni-corvinus.hu/3373/>. (Lipták – Matiscsákné, *A kisgyermekes nők foglalkoztatási helyzete és lehetőségeik*)

⁴² *Ibid*. and Göndör, *Munka és család a munkajog tükrében*, pp. 26-28.

⁴³ Menedzsment Fórum, "Csak nő a bérszakadék: már 45 ezerrel kevesebbet keresnek a nők a férfiaknál", 29.10.2019, <https://mfor.hu/cikkek/makro/csak-no-a-berszakadek-mar-45-ezerrel-kevesebbet-keresnek-a-nok-a-ferfiaknal.html>.

as the primary caregivers and childrearers, and responsible for unpaid household duties.⁴⁴ The high prevalence of gender stereotyping of women has also been promoted by the present government with various policies and communications highlighting women's role in raising children within a family, and introducing measures solely associating women with the family. At the same time very few measures have been introduced to encourage men to play a more active role within the household and in raising children.⁴⁵ Studies of various academics and the reports of civil society organizations show that these traditional gender roles have an impact on women's employability on the labour market, as many employers regard them as less productive and reliable compared to men due to their primary role being seen as mothers and caregivers. In particular, men with children are considered a much more valuable labour force than women with children.⁴⁶

1.3 PARENTAL LEAVE AND BENEFITS: A SYSTEM BIASED AGAINST WOMEN

Women in Hungary are entitled to up to three years' paid leave following their child's birth, which is among the most generous in Europe.⁴⁷

Table 1. Main types of child-related leaves parents are entitled to (For detailed rules see below description)

Absence type	Who is entitled to take it?	How long does it last?	Benefits received
Maternity leave	Woman (or man if the woman is absent due to death or sickness)	24 weeks	Infant-care subsidy or childcare allowance
Leave of absence taken without pay for caring for a child	Both the woman and the man	Up to the third birthday of the child	Childcare subsidy and childcare allowance or only childcare allowance
Paternity leave	Man	5 days (7 days in case of twins)	Absentee pay

The Hungarian Labour Code provides 24 weeks of paid maternity leave.⁴⁸ The law does not allow the sharing of this period between partners, which would encourage men to bond with their child and help the women to return to work earlier. Furthermore, only two weeks of maternity leave are obligatory, in contrast with the 14 weeks prescribed by the ILO Maternity Protection Convention No. 183⁴⁹ and European Union Directive 92/85/EEC.⁵⁰ Working men receive only five days of paternity leave (seven days in case of twins) – with some exceptions of certain government employees who receive eight days by law (ten days in case of twins)⁵¹ – that can be used within the first two months following their child's birth.⁵² Although the EU directive on work and life balance⁵³ adopted in 2019 has raised the obligatory paternity leave period to 10 working days, this has not been introduced into Hungarian law (despite the fact that some other provisions of the same directive have been adopted in the Labour Code as of 1 January 2020). Statistical data show, however, that

⁴⁴ A Magyar Női Érdekérvényesítő Szövetség közpolitikai ajánlásai, pp. 58-59., and EIGE, *Gender Equality Index 2019, Hungary*, pp. 3., available at: https://eige.europa.eu/sites/default/files/documents/20190376_mh0119028enn_pdf.pdf.

⁴⁵ See subchapter 3.3., Forms of discrimination following maternity leave, for more details.

⁴⁶ A Magyar Női Érdekérvényesítő Szövetség közpolitikai ajánlásai; Gregor, *Nem vész el, csak átalakul?* and Friedrich Ebert Stiftung, Anikó Gregor and Eszter Kováts: *Women's Affairs 2018 Societal Problems and Solution Strategies in Hungary*, May 2018, pp. 1., available at: <https://library.fes.de/pdf-files/bueros/budapest/14462.pdf>.

⁴⁷ OECD, Family Database, *Parental leave systems 2018*, Chart PF2.1.A, Paid maternity leave, ppl. 5, available at: https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf.

⁴⁸ Section 127 of the Labour Code. Under the law, at maximum, four weeks of the maternity leave should fall before the expected day of the childbirth.

⁴⁹ Article 4(1) of ILO C183 Maternity Protection Convention, 2000 (No. 183), available at: https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C183. (ILO Maternity Protection Convention No. 183)

⁵⁰ See section 127. (1) of the Labour Code and Article 8 of the Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, 19 October 1992, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31992L0085&from=EN>. (Directive 92/85/EEC)

⁵¹ Working men who fall under the laws Act CVII of 2019 on bodies with special legal status and the status of their employees and Act CXXV of 2018 on governmental administration receive 8 working days of paternity leave as opposed to men whose employment relations fall under different laws regulating employment.

⁵² Section 118 (4) of the Labour Code.

⁵³ See Article 4 of the Directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017PC0253&from=EN>. (Directive on work-life balance for parents and carers) Hungary has not transposed the Directive in its national law yet and can do that by 02.08.2022.

most men do not even use the existing paternity leave. Accounts of experts interviewed by Amnesty International also confirm that many men do not use this leave.⁵⁴

Table 2. The number of live births and employees who take paternity leave in the private sector per year⁵⁵

Year	Number of live births	Number of employees taking paternity leave in the private sector
2015	91,690	24,324
2016	93,063	23,992
2017	91,577	25,919
2018	89,807	25,307

Beyond the 24-week maternity leave, women and also men can take ‘parental leave’, the so-called ‘leave of absence taken without pay for caring for a child’ and stay at home with their child until they reach three years of age. Both partners have an individual right to this unpaid leave and are entitled to the payment of social security benefits. However, if both partners decide to take this leave, only one of them is entitled to social security payments, and only the mother has a right to job protection, which is a clear disincentive for men to take this leave.⁵⁶ The law does not permit the transfer of part of the parental leave to the other parent. However, this leave is due to be changed in the near future, as required by the EU directive on work and life balance adopted in 2019.⁵⁷ In reality the majority of men do not make use of the parental leave, as it is considered the role of women to stay at home with the child and because men’s salary is usually higher than that of women, so the family has a better financial situation if the woman stays at home.⁵⁸ By contrast, a high number of women, however, do avail themselves of their right to care for their child themselves until the age of three – particularly if they do not have the economic need for a second wage – based on the common view that it is in the best interest of the child,⁵⁹ or if there is no childcare facility available for them.

During the 24-week maternity leave, women who worked before their maternity are entitled to a so-called monthly ‘infant-care subsidy’ (csecsemőgondozási díj) that is equivalent to 70% of last salary, with no upper limit.⁶⁰ When it expires, they receive the so-called ‘childcare subsidy’ (gyermekgondozási díj or GYED), which again equates to 70% of the last salary, with an upper limit, and continues until the child reaches the age of two years.⁶¹ Although employers pay these benefits to their employees, they can get reimbursed by the

⁵⁴ Amnesty International interviews with trade union representatives and employment law experts, between September 2019 and March 2020.

⁵⁵ Self-constructed table based on data from different data sources: The number of live births from the database of the National Central Statistical Office, *Népesség, népmozgalom (1900-), Population, population movement since 1900* (own translation), at: https://www.ksh.hu/docs/hun/xstadat/xstadat_hosszu/h_wdsd001a.html, and the number of private sector workers who took paternity leave, based on information the National Treasury Office collects from private sector employers. With no such requirement for the public sector, there is no data available on how many public sector employees request paternity leave. But as the number of this group amounts to about 18% of the working population, and about 75.3% of them are women (as per Nemzeti Köszolgálati Egyetem Kutatásmódszertani és Mérésügyi Iroda, *Jó Állam Jelentés 2019*, pp. 164., at: https://joallamjelentes.uni-nke.hu/2019_pages_PDF/Jo_Allam_Jelentes_2019_Elso_Valtozat.pdf), the number of public sector employees taking paternity leave may not be high. The number of private sector workers who took paternity leave was requested by Dr. Zita Gurmai, Member of the Hungarian Parliament and obtained from the Ministry of Finance on 11 March 2020 and shared it with us. The data that Amnesty International obtained from the Ministry of Human Capacities show a similar figure for men who took paternity leave in 2018 (the received data only refers to this particular year).

⁵⁶ HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp. 11.

⁵⁷ The new directive – and also the Parental Leave Directive (2010/18/EU) – provides for individual rights of at least four months to parental leave on the grounds of the birth or adoption of a child to take care of that child. Two months of this leave cannot be transferred to the other parent. See Article 5 of the new Directive on work-life balance for parents and carers.

⁵⁸ Göndör, *Munka és család a munkajog tükrében*, pp. 175. and also Sára Hungler – Ágnes Kende: *Nők a család- és foglalkoztatáspolitikai keresztútján*, 2019, pp. 3., at: <http://real.mtak.hu/104933/>. (Hungler – Kende, *Nők a család- és foglalkoztatáspolitikai keresztútján*)

⁵⁹ Anita Fedor R. – Andrea Toldi, *Labour market opportunities of women with young children after childbirth*, in *KONTAKT* 2017/19(3), pp. 220-226.

⁶⁰ Article 40-42 of Act LXXXIII of 1997 on the Services of the Compulsory Health Insurance System, at: <https://net.jogtar.hu/jogszabaly?docid=99700083.tv>. (Act on the Services of the Compulsory Health Insurance System) The infant-care subsidy can only be paid to the man if the woman is absent due to death, sickness or other serious circumstances.

⁶¹ Article 42/A.-42/G. of Act on the Services of the Compulsory Health Insurance System. In case of twins, parents get this subsidy until the children reach the age of three. Since 1 January 2020, grandparents who have been active on the labour market can also request this benefit and stay at home with their grandchild if the parents are working, if they meet certain criteria. See <https://www.kormany.hu/hu/hirek/januar-1-jetol-igenyelhető-a-nagyyszülői-gyed>.

state.⁶² Based on the fact that the above benefits are calculated from the last salary, this system is highly effective for middle- or high-income households, but not for those with a low income.⁶³

The third allowance, the universal 'childcare allowance' (gyermekgondozást segítő ellátás or GYES) is a low amount and payable from the child's birth until they reach three years of age to parents who did not have a previous employment prior to their maternity leave. Those previously employed are also eligible for this allowance when their child is between two and three years of age. Beneficiaries of this support are permitted to work either part-time or full-time.⁶⁴ Finally, all women are entitled to a universal 'maternity support allowance' (anyasági támogatás), a one-off payment (of EUR 200), if they can prove that they attended antenatal care four times during their pregnancy in Hungary.⁶⁵ 'Family allowance' is guaranteed to every family from the date of birth of the first child until the child completes secondary studies. The amount of this universal allowance provided increases if there is more than one child in the family, for single parents, or in the case of disability.⁶⁶

The opportunity for this long maternity leave combined with parental leave is very generous and apart from Hungary, characteristic of the post-socialist states in the region.⁶⁷ However, the long absence from work can make it difficult for women to return to work. To facilitate their return, the law requires employers to allow employees with young children to enjoy job protection from the time of their pregnancy until their child has reached three years of age and to work part-time following their return from maternity leave up to the fourth birthday of their child (for those raising three or more children up to the sixth birthday of the youngest child)⁶⁸. Besides these measures, the government has introduced additional measures to facilitate women's employment. One measure encourages organizations to employ women with three or more young children, by making them eligible for tax relief. Another measure is aimed at expanding childcare facilities by introducing new tenders to encourage municipalities to build new nurseries and kindergartens; the lack of adequate and accessible childcare facilities still remains a problem for many women, especially in rural areas, with inflexible opening hours and long waiting lists in case of nurseries.⁶⁹

In conclusion, many women with small children face a range of discriminatory barriers hindering their ability to return to the workplace. Some of these are cultural but many are exacerbated by the policies of the government and the fact that it does not properly enforce the law.

⁶² Article 62 of Act on the Services of the Compulsory Health Insurance System.

⁶³ HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp. 13.

⁶⁴ Article 20-22 of Act LXXXIV of 1998 on supporting families, available at: <https://net.jogtar.hu/jogszabaly?docid=99800084.TV>. (Act LXXXIV of 1998 on supporting families)

⁶⁵ Article 29-33 of Act on supporting families.

⁶⁶ Chapter II of Act on supporting families.

⁶⁷ Beáta Nagy – Éva Fodor, *A gazdasági válság hatásai a férfiak és a nők munkaerő-piaci helyzetére Kelet-Közép-Európában*, in *Szociológiai Szemle* 25(3), pp. 4., available at: http://real.mtak.hu/37496/1/nagy_fodor.pdf.

⁶⁸ Section 61(3) of the Labour Code.

⁶⁹ Hungary did not meet the targets set by the European Council in 2002 of providing child-care facilities by 2010 for at least 90% of children between the age of 3 and the mandatory school age and at least 33% of children under the age of 3. HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp.12-13. According to the government, the number of nursery places has increased by 58% since 2010. In 2019, about 18% of the children under three years of age were admitted into nurseries. The government plans to further extend the number of available places to reach 70,000 by 2022 (currently there are about 51,200 places). Source: Answers received from the Deputy State Secretariat for Family Affairs to Amnesty International list of question, March 2020.

2. HUNGARY'S LEGAL OBLIGATIONS

2.1 OBLIGATIONS CONCERNING GENDER-BASED DISCRIMINATION

Hungary has ratified a range of international and regional human rights treaties that require it to respect the principles of non-discrimination and equality.⁷⁰ For example, as a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Hungary shall guarantee that all of the human rights contained in this Covenant – including the right to work, to just and favourable conditions of work and social security⁷¹ – are exercised by individuals “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, including marital or family status, health or economic and social situation.⁷² Moreover, the ICESCR explicitly states that state parties, including Hungary, are obliged “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights”, enshrined in this treaty.⁷³

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), that Hungary also ratified defines ‘discrimination against women’ as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.⁷⁴ While this definition only refers to discrimination on the grounds of sex, due to the evolution of the notions of sex and gender over the years, it also applies in broader terms. Based on General Recommendation No 28, while the term ‘sex’ refers to biological differences between men and women, ‘gender’ refers to “socially constructed identities, attributes and roles for women and men, and society’s social and cultural meaning for these biological differences”, which result in hierarchical relationships between women and men and in the unfair distribution of power and rights favouring men.⁷⁵

⁷⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 2., at: <https://www.refworld.org/docid/4a60961f2.html>. (CESCR, General Comment No. 20.)

⁷¹ CESCR, General Comment No. 20., para. 3. The International Covenant on Economic, Social and Cultural Rights explicitly recognizes the obligation of states to ensure “everyone” the enjoyment of various Covenant rights, including these three.

⁷² Article 2(2) of the United Nations, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. (ICESCR)

⁷³ Article 3 of ICESCR and also CESCR, General Comment Nr. 16. Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, para. 1., available at: <https://www.refworld.org/docid/43f3067ae.html>. (CESCR, General Comment No. 16.)

⁷⁴ United Nations, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Article 1, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>. (CEDAW)

⁷⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, para. 5., available at: <https://www.refworld.org/docid/4d467ea72.html>.

It is important to acknowledge that while gender-based discrimination could occur both against women and men, it disproportionately impacts women.⁷⁶ The current report does not focus on discrimination against men, but acknowledges experiences of discrimination on multiple, intersecting grounds such as sex/gender, and economic and social status, among others.

Through ratification of CEDAW, Hungary undertook to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, by i) taking the necessary steps to ensure that its legislation embodies the principle of the equality of men and women, and ii) adopting appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women by any person, organization or enterprise.⁷⁷ Moreover, Hungary is obliged to take all appropriate measures in all fields, in particular in the political, social, economic and cultural fields, to ensure “the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”.⁷⁸

The ICESCR, CEDAW and other international human rights treaties that Hungary ratified, became part of the national law by parliamentary authorization and promulgation, on the basis of the Fundamental Law⁷⁹ and Act on the procedure concerning international treaties⁸⁰. Hungary’s dualist system treats the international and domestic systems of law as separate and independent, however, it does not clarify the hierarchy between them; those laws transposing international treaties are, however, explicitly subordinate to the Fundamental Law.⁸¹

2.2 LEGAL REQUIREMENTS CONCERNING GENDER-BASED EMPLOYMENT DISCRIMINATION

Hungary is required under international law to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure the same rights with men.⁸² Hungary must also ensure equality between women and men “in all areas, including employment, work and pay”.⁸³

Under the ICESCR, Hungary has also undertaken the obligation to adopt a legal framework requiring companies to exercise human rights due diligence in order to “identify, prevent and mitigate the risks of violations of [economic, social and cultural] rights, to avoid such rights being abused, and to account for the negative impacts” on the enjoyment of the above rights that are “caused or contributed to by their decisions and operations and those of entities they control” or are in business relationship with.⁸⁴

As a member of the EU and the International Labour Organization (ILO), Hungary has committed to implement a number of obligations commonly agreed with these international bodies. Hungary has ratified a number of ILO conventions that set out basic principles and rights at work.⁸⁵ These include in the context of the issues addressed in this report the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Maternity Protection Convention, 2000 (No. 183). These are key legal instruments that prescribe what measures countries should take to prevent and eliminate employment discrimination on the grounds of sex/gender and motherhood.⁸⁶ On the other hand, directives adopted by the European Council

⁷⁶ Equal Treatment Authority (in Hungarian ‘Egyenlő Bánásmód Hatóság’), *A férfiak és nők közötti jövedelemegyenlőtlenség és a nemi szegregáció a mai Magyarországon*, 2013, pp. 8-10., at: https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/TAMOP_EBH_1_szakertoi.pdf.

⁷⁷ United Nations, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Article 2, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>. (CEDAW).

⁷⁸ Article 3 of CEDAW.

⁷⁹ Section Q (3) of the Fundamental Law.

⁸⁰ Chapter III of Act L of 2005 on the procedure concerning international treaties, available at: http://nit.hu/cgi_bin/njt_doc.cgi?docid=94249_346177.

⁸¹ Molnár Tamás: *A nemzetközi jog és a magyar jog viszonya*, 2018 in Jakab András – Fekete Balázs (szerk.): *Internetes Jogtudományi Enciklopédia*, Chapter 5.2., available at: <https://ijoten.hu/uploads/a-nemzetkozi-jog-es-a-magyar-jog-viszonya.pdf>. Only *ius cogens* norms are above the Fundamental Law, see Chapter 5.1. of the above report.

⁸² Article 11 of CEDAW.

⁸³ Article 23 of the Charter of Fundamental Rights of the European Union (2012/C 326/02), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>.

⁸⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, available at: <https://www.refworld.org/docid/5beaecba4.html>.

⁸⁵ For the full list of convention Hungary has ratified, see: https://www.ilo.org/dyn/normlex/en/?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102679.

⁸⁶ Hungary however has not ratified the Workers with Family Responsibilities Convention, 1981 (No. 156) and the Termination of Employment Convention, 1982 (No. 158). For the full list of convention not ratified by Hungary, see: https://www.ilo.org/dyn/normlex/en/?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102679.

and the European Parliament set out clear goals that Hungary (and all other members states) must achieve, but leave in its discretion to choose how to do so. Individual countries should incorporate provisions of the directives into their national legislation by a given deadline.⁸⁷ Hungary has transposed most of the key EU directives concerning the implementation of the principle of equal treatment of men and women and non-discrimination in the realm of employment⁸⁸, except Directive 2019/1158 of 20 June 2019 on work-life balance for parents and carers⁸⁹, that the Hungarian government is committed to incorporating until the official deadline of 2 August 2022.⁹⁰

As required by the above human rights instruments, Hungary's Equal Treatment Act also describes what constitutes discrimination in the workplace: "a violation of the principle of equal treatment in particular if the employer inflicts direct or indirect negative discrimination upon an employee".⁹¹ However, laws regulating employment relationships, including the Labour Code, do not explicitly prohibit discrimination nor list any prohibited grounds of discrimination or refer to the prohibited grounds enumerated in the Equal Treatment Act 2003. They only provide for the principle of equal treatment and they need to be read in conjunction with the Equal Treatment Act.⁹² Besides the above legal acts, the interpretive decisions of the Constitutional Court, the jurisprudence of the Kúria (Hungary's Supreme Court) and that of labour and administrative courts and the civil courts, as well as the decisions of the Equal Treatment Authority are normative sources of law on gender equality.⁹³

⁸⁷ European Commission, *Types of EU law*, available at: https://ec.europa.eu/info/law/law-making-process/types-eu-law_en and European Commission, *Applying EU law*, available at: https://ec.europa.eu/info/law/law-making-process/applying-eu-law_en.

⁸⁸ These include Directive 1992/85/EEC on safety and health at work of pregnant workers and new mums, Directive 2000/78/EC on establishing a framework for equal treatment in employment and occupation; Directive 2010/18/EU on parental leave and Directive 2006/54/EC on implementing the principle of equal opportunities and equal treatment, that have been analysed in course of the current research. For a full list of directives aiming to achieve gender equality, see: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/equality/equality-between-women-and-men_en.

⁸⁹ Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, 20 June 2019, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1158&from=EN>. (Directive 2019/1158 on work-life balance)

⁹⁰ Article 33 of Directive 2006/54/EC.

⁹¹ Chapter III of the Equal Treatment Act. The other areas are education and training, social and healthcare services, housing and use of goods, trade and services.

⁹² Section 12 of the Labour Code, Section 13 Act on Civil Servants of Public Services and Section 3(1) of Act on the Legal Status of Public Servants. See also International Labour Organization (ILO), Observation (CEACR) - adopted 2017, published 107th ILC session (2018), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3340458:NO. (ILO, Observation 2017 related to the Convention No. 111)

⁹³ European Commission, European network of legal experts in gender equality and non-discrimination, *Country report: Gender equality, Hungary*, 2019, pp. 8., available at: <https://www.equalitylaw.eu/downloads/5044-hungary-country-report-gender-equality-2019-pdf-1-26-mb> (EC, *Country report: Gender Equality, Hungary*, 2019).

LAWS IN HUNGARY REGULATING EMPLOYMENT RELATIONSHIPS REVIEWED IN THE CURRENT RESEARCH

Hungary has several laws regulating different forms of employment relationships. The main legislation, *lex generalis* is Act I of 2012 on the Labour Code that “lays down the fundamental rules for decent work according to the principle of free enterprise and the freedom of employment, taking into account the economic and social interests of employers and workers alike”.⁹⁴ This law is in the centre of this report, while other relevant laws in the scope of the current research are:

- Act XXXIII of 1992 on the Legal Status of Public Servants⁹⁵
- Act CXCIX of 2011 on Civil Servants of Public Services⁹⁶

These laws, in specific sections, refer to the fact that they are based on the Labour Code and their provisions constitute *lex specialis*, overriding the more general provisions of the Labour Code. This also means that in relation to the principle of equal treatment, the provisions of the Labour Code apply to Act on the Legal Status of Public Servants, while Act on Civil Servants of Public Services has a specific provision referring to that principle.⁹⁷

There are further laws that regulate special forms of employment relationships, that a smaller ratio of people are employed in and are not in the scope of this report. Where relevant, the current report refers to those as well, and we reference additional work-related laws or other legislation that have relevance for employers and employees in the labour market.

Besides the state, Hungarian companies also have a responsibility to respect human rights, including throughout their operations and supply chains.⁹⁸ To fulfil this obligation, companies should have in place an ongoing and proactive human rights due diligence process to identify, prevent, mitigate and account for how they address their impact on human rights. Avoiding causing or contributing to human rights abuses and addressing impact with which they are involved also includes remediating any actual abuses companies cause to their employees or any other person.⁹⁹

⁹⁴ Section 1 of the Labour Code.

⁹⁵ Act XXXIII of 1992 on the Legal Status of Public Servants, at: <https://net.jogtar.hu/jogszabaly?docid=99200033.TV>. (Act on the Legal Status of Public Servants)

⁹⁶ Act CXCIX of 2011 on Civil Servants of Public Services, at: <https://net.jogtar.hu/jogszabaly?docid=A1100199.TV&searchUrl=/gyorskereso%3Fkeyword%3Degyszer%25C5%25B1s%25C3%25ADtett%2520munka>. (Act on Civil Servants of Public Services)

⁹⁷ See footnote nr. 92.

⁹⁸ United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "protect, Respect and Remedy" Framework*, HR/PUB/11/04, 2011, General Principles and Chapter II., at:

https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

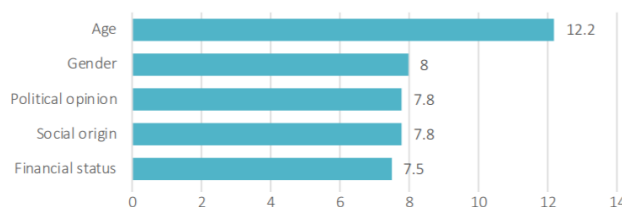
⁹⁹ Ibid, Chapter II.

3. GENDER-BASED DISCRIMINATION IN THE WORKPLACE

3.1 DISCRIMINATION BASED ON SEX OR GENDER IN HUNGARY

Discrimination experienced on the grounds of sex or gender is frequent in Hungary. As the findings of joint research by the Equal Treatment Authority and the Institute for Sociology of the Hungarian Academy of Sciences conducted in 2019 show, gender is ranked second among the four most frequent grounds for discrimination in society.¹⁰⁰

Graph 1. Frequency of reasons for personally experienced discrimination, 2019 (%)¹⁰¹



During 2010-2019¹⁰², the most frequent grounds for discrimination did not change, with age being the most frequently mentioned reason for discrimination and gender remaining among the top five reasons.¹⁰³ At the same time, discrimination in employment also occurs frequently in Hungary. This is also confirmed by the above mentioned joint Hungarian research, which found that in 2019 – and also in the entire period of 2010-2019 – respondents most frequently experienced discrimination in the workplace over the previous 12 months, with social and healthcare services mentioned as the second reason, and trade and use of services in the third place.¹⁰⁴

¹⁰⁰ Equal Treatment Authority and Centre for Social Sciences, Institute for Sociology, Hungarian Academy of Sciences, *Personal and social perception of discrimination and legal awareness of the right to equal treatment, Survey findings*, 2019, pp. 11-12., at: https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/EBH_2019_FINAL_EN_20191208%20Final_isbn_online.pdf. (Equal

Treatment Authority and Centre for Social Sciences, *Personal and social perception of discrimination*, 2019)

¹⁰¹ The slightly cropped graph is taken from the cited study, see page 11.

¹⁰² The Equal Treatment Authority and the Hungarian Academic Sciences conducted the survey four times (in 2010, 2013, 2017 and 2019) on a national representative sample with the aim of mapping the various dimensions of discrimination (in the first two occasions) and to assessed (1) personally experienced discrimination, (2) social perception of discrimination and (3) awareness of and attitudes towards the legal framework of equal treatment and the Authority (in the second two occasions).

¹⁰³ Equal Treatment Authority and Centre for Social Sciences, *Personal and social perception of discrimination*, 2019, pp. 14-15.

¹⁰⁴ Ibid, pp. 18-19.

3.1.1 VAGUELY WORDED EXEMPTIONS FROM RESPECTING THE PRINCIPLE OF EQUAL TREATMENT

According to the Equal Treatment Act, in cases of alleged direct discrimination the principle of equal treatment is not violated by any “conduct, measure, condition, omission, instruction or practice” a) that “limits a basic right of the entity brought into a disadvantageous position in order to enforce another basic right in an unavoidable situation, assuming that such a limitation is suitable for this purpose and is also in proportion” thereto, or b) that “is found by an objective consideration to have a reasonable explanation directly related to the relevant relationship in cases not referred to in point a)”.¹⁰⁵ The Act does not allow for the above exemptions in case of direct discrimination and unlawful segregation on the grounds of racial origin, colour, nationality, or nationality or ethnicity.¹⁰⁶ However, it fails to include sex or gender in the protected grounds for which the above exemptions do not apply, therefore it fails to comply with Directive 2006/54/EC.¹⁰⁷ Moreover, unlike the Equal Treatment Act, Directive 2006/54/EC only allows exemptions in relation to indirect discrimination, stating that indirect discrimination is “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary”.¹⁰⁸ Based on the above, the Equal Treatment Act is in breach of Directive 2006/54/EC.

The Equal Treatment Act also allows exemptions in terms of what constitutes discrimination concerning employment.¹⁰⁹ According to its provisions, it does not constitute a violation of the principle of equal treatment if a) it is “proportional, justified by the characteristics or nature of the work and is based on all relevant and legitimate terms and conditions considered during the hiring, or b) the discrimination arises directly from a religious or other ideological conviction or national or ethnic origin fundamentally determining the nature of the organisation, and it is proportional and justified by the nature of the employment activity or the conditions of its pursuit.”¹¹⁰ While point a) is in line with the Directive 2006/54/EC, point b) may lead to discrimination based on other protected grounds.

While this formulation of Section 22(1) a) of the Act seems to follow the solution applied in Article 14 of Directive 2006/54/EC, due to the general exempting clauses of Section 7(2) of the Act, Section 22(1) a) could be interpreted as only applying in relation to the recruitment process, allowing employers to apply and refer to the general exempting clause with regard to all other aspects of employment.¹¹¹

3.1.2 FORMS OF DISCRIMINATION IN THE WORKPLACE

Women experience discrimination in their workplace and the labour market in various forms due to their sex/gender and motherhood throughout their lives.¹¹² In a non-representative survey conducted by Amnesty International,¹¹³ the findings confirm these patterns and they are consistent with similar other studies.¹¹⁴

In our survey, 31.95% of all respondents (85 out of 266 individuals) said that they suffered discrimination in the workplace once or multiple times. From the eleven different forms of discrimination¹¹⁵, some common experiences emerged, based on the percentage of those who said they faced discrimination:

- 50.59% said they received a lower wage than their male colleagues doing equal work.

¹⁰⁵ Section 7(2) of the Equal Treatment Act.

¹⁰⁶ Section 7(3) of the Equal Treatment Act.

¹⁰⁷ EC, *Country report: Gender Equality, Hungary*, 2019, pp. 13., available at: <https://www.equalitylaw.eu/downloads/5044-hungary-country-report-gender-equality-2019-pdf-1-26-mb>.

¹⁰⁸ Article 2(1) of Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), 05 July 2006, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>. (Directive 2006/54/EC) The Directive stipulates in paragraph 23 of the preamble that, based on the case law of the European Court of Justice, unfavourable treatment of a woman related to pregnancy or maternity constitutes direct discrimination on the grounds of sex.

¹⁰⁹ EC, *Country report: Gender Equality, Hungary*, 2019, pp. 30.

¹¹⁰ Section 22(1) of the Equal Treatment Act.

¹¹¹ EC, *Country report: Gender Equality, Hungary*, 2019, pp. 30.

¹¹² Kata Keveházi, *Nem-ügy: Nemi alapú diszkrimináció a munkahelyeken és a vállalkozási szférában*, 2017, pp. 257., at: http://kgk.uni-obuda.hu/sites/default/files/18_KevehaziKata.pdf (Keveházi, *Nem-ügy*) and also Anna Lovász – Bori Simonovits, *Classic Labour Market Discrimination*, 2018, in: *The Hungarian Labour Market 2018*, pp.176.

¹¹³ Amnesty International conducted an online survey between January and February 2020. In the survey, See Methodology.

¹¹⁴ See footnote nr. 113.

¹¹⁵ Respondents could mark more than one forms of discrimination from a list of eleven different forms.

- 67.06% experienced discrimination with respect to professional development and/or career opportunities.
- 40% experienced discrimination with respect to flexible working/overtime.
- 37.65% indicated that they suffered some form of discrimination upon return to the workplace, following their maternity leave/parental leave.
- 36.47% faced discrimination when requesting, during or following sick leave.¹¹⁶

INTERSECTIONAL DISCRIMINATION

Women in Hungary may suffer distinct or additional discrimination on the grounds of a combination of several protected characteristics or different aspects of their identity, which are interconnected, such as age, disability, ethnicity, sexual orientation or gender identity, societal and financial background etc. For example, being unlawfully dismissed from a job on the grounds of sex and age, could be much more detrimental to an elderly woman a few years before retiring, especially in a smaller town, than for a young woman in a bigger city or in the capital.¹¹⁷

The Hungarian legislation does not address explicitly intersectional discrimination.¹¹⁸ Moreover, Hungarian case law on gender-based discrimination does not yet recognize the specialist nature of cases when multiple discrimination and/or intersectional discrimination occurs.¹¹⁹

However, the Equal Treatment Authority does have the authority to examine such claims of discrimination based on multiple protected grounds and their interconnectedness, and has done so on several occasions, such as in case of female workers not receiving premium due to absence to care for a sick child (Decision No. EBH/130/2017¹²⁰).¹²¹

Pregnant women and those with young children returning from maternity leave are particularly exposed to less favourable treatment by employers due to the fact that they are often seen as less valuable members of the workforce.¹²² Moreover, employers often exploit the vulnerability of these groups of employees, as they are not able to change jobs easily due to their restricted mobility, fear of being without a job and not being able to care for their families. Furthermore, their financial situation can be significantly impacted by an unfair dismissal, and/or other violations of their employment rights.¹²³

The survey conducted by Amnesty International confirms these patterns. When we analyze discrimination related to their pregnancy, right to maternity or parental leave and return from maternity or parental leave, results of the survey show that 21.4% of all responses mentioned experiences of less favourable treatment due to pregnancy and for being a mother. In this report Amnesty International showcased some common experience of pregnant women and women with young children. However, as results of the survey, the interviews conducted and studies also show, these groups of women are also subjected to other discriminatory practices in their workplace.

Hungary has been championing family friendly policies which, it must be stated, do not intend to promote gender equality, but rather to support families to have children and focus on women's role in the family to maintain demographic growth. In addition, the government has mentioned on several occasions in communications with human rights bodies the preparation of a new national strategy on gender equality to replace the existing one that have not been implemented for many years.¹²⁴ The new Action Plan to Strengthen the Role of Women in the Family and Society (2021-2030) is under development at the

¹¹⁶ Respondents could choose more answers in the same time.

¹¹⁷ Katalin Tardos, *Életkor és esélyegyenlőség*, 2017, pp. 93-95., available at: <http://www.belvedere.meridionale.hu/letolt/Tardos%20Katalin%20Eletkor%20es%20eselyegyenloseg.pdf>

¹¹⁸ EC, *Country Report: Gender Equality, Hungary*, 2019, pp. 17.

¹¹⁹ *Ibid.*

¹²⁰ See details under subchapter 3.3.2. on Pressure exerted on families to leave caring for a sick child to women only.

¹²¹ The Authority produced a report that includes a collection of case law on recent multiple/intersectional discrimination cases it investigated. Equal Treatment Authority: *A többszörös diszkrimináció megjelenése az Egyenlő Bánásmód Hatóság joggyakorlatában*, EBH-füzetek 5, 2018, available at: https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/5_teljes_HU.pdf.

¹²² Gabriella Mészáros, *A várandós munkavállaló tájékoztatási kötelezettsége*, In: Miskolci Egyetem, Szabó Miklós Doktoranduszok Fóruma Miskolc, 2016. november 17. *Állam- és Jogtudományi Kar szekciókiadványa.*, 2017, pp. 169., at: http://acta.bibl.u-szeged.hu/49965/1/juridpol_080_169-182.pdf. (Mészáros, *A várandós munkavállaló tájékoztatási kötelezettsége*)

¹²³ Keveházi, *Nem-ügy*, pp. 257.

¹²⁴ HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp. 5., and also Commissioner for Human Rights of the Council of Europe, *Report following her visit to Hungary from 4 to 8 February 2019*, 21 May 2019, CommDH(2019)13, pp. 5., available at: <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>. (Commissioner for Human Rights of the Council of Europe, *Report following her visit to Hungary*)

moment.¹²⁵ It is still to be seen whether this new strategy will include sufficient policies and measures to advance women's rights and to protect women, including pregnant women and those with young children, from discrimination in the workplace.

3.2 DISCRIMINATION AGAINST PREGNANT WOMEN

“From the moment a female employee announces she is pregnant, the employer looks at her as a ‘ticking bomb’ that will sooner or later detonate.”

Ágnes Repka, human resources expert and employment law advisor, March 2020

Since the end of the Socialist era in 1989-1990, successive Hungarian governments have prioritized families and introduced policies to boost fertility rates and encourage women to have children. However, in so doing they have failed to provide adequate protection for pregnant women in law and practice against different forms of employment discrimination based on their sex/gender and motherhood, including unlawful dismissal.

While discrimination against pregnant women is often associated with termination of the employment relationship, expectant workers can also suffer from other forms of less favourable treatment in their workplace. While these employees are legally protected from some forms of discriminations, their rights continue to be frequently violated in the workplace, revealing a clear rift between protection in theory and in practice. This is compounded by the fact that there are limited options for remedying those discriminatory treatments, with pregnant workers often abandoning the idea of seeking reparation or other forms of remedy for the damage they suffered, as they consider that it is not worth putting themselves and their child under further stress and pressure.¹²⁶

3.2.1 NO EFFECTIVE PROTECTION FROM DISMISSALS

According to Directive 92/85/EEC,¹²⁷ Hungary has the obligation to take all “necessary measures to prohibit the dismissal of workers from the beginning of their pregnancy until the end of their maternity leave, save exceptional cases not connected with their condition which are permitted under national legislation and/or practice and where applicable”.¹²⁸

In accordance with this obligation, the Hungarian Labour Code does explicitly prohibit the dismissal by notice of expectant workers and women receiving in vitro fertilization treatment (IVF treatment) for up to six months from the beginning of such treatment. However, this protection only applies if the pregnant employee informs her employer about the pregnancy or the treatment.¹²⁹ Since 2016, however, if the employee notifies the employer within fifteen days of receiving the dismissal letter, the employer may withdraw the termination of employment in writing, but they are not obliged to do so.¹³⁰

The law also allows employers to terminate the employment relationship with the above employee group a) by mutual consent or b) without notice in case they “wilfully or by gross negligence commit a grave violation

¹²⁵ Answers received from the Deputy State Secretariat for Family Affairs to Amnesty International's list of questions, March 2020.

¹²⁶ Amnesty International interviews with victims of gender-based discrimination, between January and March 2020 and also Ágnes Puskás, *A várandós nők jogainak érvényesülése, különös tekintettel az egészséget nem veszélyeztető biztonságos munkafeltételekre*, 2016, in: *Gazdaság és Jog*, No. 9, XXIV. edition, pp. 26., at:

https://www.mokk.hu/regioldal/pdf/linkgyujto/Gazdasag_Jog/gazdasag_es_jog_9_szam.pdf. (Puskás, *A várandós nők jogainak érvényesülése*) For further details on domestic remedies, see Chapter 4.

¹²⁷ Article 10(1) of Directive 92/85/EEC. Hungary transposed this Directive in the Labour Code (See Section 299c). The ILO Maternity Convention No. 183 prescribes similar obligations for Hungary.

¹²⁸ Article 10(1) of the Council Directive 92/85/EEC.

¹²⁹ Section 65(3) and (5) of the Labour Code. These provisions of the Labour Code also apply for those employed under Act on the Legal Status of Public Servants. Act on the Legal Status of Public Servants and Act CXXV of 2018 on the Governmental Administration have their own provisions under Section 70(1)-(2) and Section 113(1)-(3) respectively. Act on the Legal Status of Public Servants, however, does not mention the opportunity for the employer to withdraw the termination of employment.

¹³⁰ Section 65(5) of the Labour Code, introduced by an amendment to the law on June 2016 by Act LXVII of 2016, available at: <https://net.jogtar.hu/jogszabaly?docid=A1600067.TV×hift=ffffff4&xtreferer=00000001.TXT>.

of any substantive obligations arising from the employment relationship” or c) if they “otherwise engage in any conduct that would render the employment relationship impossible”.¹³¹

Despite the abovementioned protections against and special cases for dismissals, employers far too often terminate the contract with employees after learning that they are pregnant – without the justifiable existence of any violation of substantive obligations or of misconduct.¹³²

Victims of gender-based discrimination and experts interviewed by Amnesty International said that reasons for dismissing pregnant women are manifold.¹³³ However, one of the two main drivers is the economic interest of employers to save costs on a workforce that effectively will not perform any work for a longer period of time due to absence, and for whom they need to find a replacement. The second reason lies with the personality of the individual manager and the organizational culture in the workplace. Employers, including managers at various levels often are not aware of the consequences of their discriminative acts for the particular employees and are under the impression that productivity and efficiency of pregnant women on the job will decrease and that they will not be able to perform effectively at work after giving birth.¹³⁴

3.2.2 TENDENCY TO DISMISS PREGNANT EMPLOYEES ON SHORT-TERM CONTRACTS OR DURING THEIR PROBATION PERIOD

“Although the employment relationship can be terminated during the probation period without providing any reason, it, however, cannot violate the principle of equal treatment. The public in general is not aware of this rule.”

Legal expert of the Equal Treatment Authority, February 2020

Hungarian legislation stipulates that, during the probation period, both the employer and the employee can terminate the employment relationship without the obligation to provide reasons.¹³⁵ Many employers use this opportunity presented by the law to dismiss pregnant women contrary to their need to respect the principle of equal treatment.¹³⁶

The Equal Treatment Authority has a long-established case law on instances when an employee was dismissed during probation period and upheld claims that it was discriminatory.¹³⁷



CASE OF A KITCHEN WORKER.¹³⁸

A woman employee started working at a hospital as a kitchen worker and became pregnant during her probationary period. She informed her direct supervisor and a few days later became sick, and subsequently went on sick leave. One week later, her employer informed her via phone that her

¹³¹ Section 78(1) of the Labour Code on the dismissal without notice.

¹³² Amnesty International interviews with employment lawyers and employment law experts, between September and March 2020, and European Commission, European network of legal experts in gender equality and non-discrimination, *European equality law review, Issue 1/2017*, pp. 102., at: <https://www.equalitylaw.eu/downloads/4236-european-equality-law-review-1-2017-pdf-1-616-kb>, and also Equal Treatment Authority, “A várandósság és a próbaidő alatti felmondás”, 7 July 2018, at: <https://www.egyenlobanasmod.hu/hu/hirek/varandossag-es-probaido-alatti-felmondas>.

¹³³ Amnesty International interviews with victims, employment lawyers and employment law experts, between September and March 2020.

¹³⁴ Ibid, and also Hungler – Kende, *Nők a család- és foglalkoztatáspolitiká kereszttúján*, pp. 1-2., and Mészáros, *A várandós munkavállaló tájékoztatási kötelezettsége*, pp. 170.

¹³⁵ Section 78 and 79(1/a) of the Labour Code.

¹³⁶ Section 5 of the Equal Treatment Act.

¹³⁷ EC, *Country Report: Gender equality, Hungary*, 2019, pp. 38. on Decision No. EBH/379/2014. See also Decision No. EBH/309/2018 on page 22. and Decision No. EBH/289/2018, No. EBH/180/2018 and No. EBH/109/2018 on the [website of the Equal treatment Authority](#).

¹³⁸ Equal Treatment Authority, Decision No. EBH/309/2018, in European Commission, European network of legal experts in gender equality and non-discrimination, *European equality law review, Issue 1/2019*, pp. 96., at: <https://www.equalitylaw.eu/downloads/4930-european-equality-law-review-1-2019-pdf-1-051-kb>, with the wrong reference.

employment was terminated with immediate effect because of her pregnancy. The employee filed a complaint with the Equal Treatment Authority claiming that the termination of her employment was discriminatory due to the fact that it was based on her pregnancy and health condition. The Authority launched an investigation and found that the respondent was not able to prove that it observed the right to equal treatment. Moreover, it confirmed that the employer violated the complainant's right to equal treatment and directly discriminated against her based on her pregnancy and health condition.

In cases like the above, employers often refer to the underperformance of the employee as reasons for their dismissal. While in certain cases this is justified and an employee's misconduct or negligence – unrelated to the pregnancy – might be a real concern for the employer, experts who spoke with Amnesty International said that employers disproportionately misuse 'underperformance' as an excuse in situations for which there is no concrete supporting evidence, in order to remove pregnant women.¹³⁹ This is also in clear breach of Directive 92/85/EEC, that stipulates that if the employee is dismissed "during the period from the beginning of their pregnancy to the end of the maternity leave...the employer must cite duly substantiated grounds for her dismissal in writing".¹⁴⁰

Employers often hire workers for project work or on a fixed-term contract, as these forms of employment relationships put less financial and administrative burden on the employer in general.¹⁴¹ In the case of fixed-term contracts, the law allows employers (not employees, though) to terminate the employment relation with immediate effect without the need to provide an explanation, but requiring the employer to pay the employee 12 months of absentee pay or if the contracts would terminate earlier than a year, the amount of absentee pay due for the remainder of time.¹⁴² While this might have a deterrent effect, some employers still use the provision to remove pregnant women from their staff.¹⁴³ This, however, means that the employee does not have any evidence to initiate legal proceedings and effectively assert her rights to prove that she was dismissed due to her condition.¹⁴⁴

Another option employers often resort to is not to renew the contract of this particular worker after her current project ends, although their continued employment was originally foreseen and justified.¹⁴⁵ This appears to be contrary to European law, as the Court of Justice of the EU found in the *Maria Luisa Jimenez Melgar v Ayuntamiento de Los Barrios* case, stating that if an employer does not renew the temporary contract of a female worker due to her pregnancy, that also constitutes a breach of the principle of equal treatment.¹⁴⁶

Similarly, in relation to a discrimination case, the Equal Treatment Authority also asserted that when the employer did not extend the contract of an employee due to her pregnancy, it committed indirect discrimination. Concerning the same case, the Budapest-Capital Administrative and Labour Court added that the employer's business interest does not under any circumstances authorize it to engage in discrimination.¹⁴⁷

¹³⁹ Amnesty International interviews with employment law experts – including legal experts of the Equal Treatment Authority – and representatives of women's rights organizations, between September and March 2020, and also Equal Treatment Authority, "A várandósság és a próbaidő alatti felmondás", 7 July 2018, at: <https://www.egyenlobanasmod.hu/hu/hirek/varandossag-es-probaido-alatti-felmondas>.

¹⁴⁰ Article 10(1) and (2) of Directive 92/85/EEC.

¹⁴¹ Wolters Kluwer, "Határozott idejű munkaszerződések láncolata – szigorú szabályozás", 29 January 2019, at: <https://jogaszvilag.hu/hatarozott-ideju-munkaszerzodesek-lancolata-szigoru-szabalyozas/> and also Piacprofit.hu, "Mikor jogszerűek az egymást követő határozott idejű munkaszerződések?", 22 February 2020, at: https://piacprofit.hu/kkv_cegblog/mikor-jogszeruek-az-egymast-koveto-hatarozott-ideju-munkaszerzodesek/.

¹⁴² Section 79 of the Labour Code.

¹⁴³ Amnesty International interviews with victims of gender-discrimination and employment law experts, between September 2019 and March 2020.

¹⁴⁴ Hungler – Kende, *Nők a család- és foglalkoztatáspolitikai keresztútján*, pp. 12.

¹⁴⁵ Amnesty International interviews with victims and employment law experts, between September 2019 and March 2020.

¹⁴⁶ Opinion of Mr Advocate General Tizzano: *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios (C-438/99)*, 7 June 2001, Reference for a preliminary ruling: Juzgado de lo Social Único de Algeciras – Spain, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61999CC0438>.

¹⁴⁷ In this case, following the decision on discrimination by the Equal Treatment Authority, the employer appealed the case at the Budapest-Capital Administrative and Labour Court. Equal Treatment Authority, Decision No. EBH/189/2014, in the *Report on the activity of the Equal Treatment Authority in 2014 and on the experiences gathered in the context of applying Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities*, pp. 16., available at: https://www.egyenlobanasmod.hu/sites/default/files/tajekoztatok/EBH_2014_english.pdf.



ÁGOTA'S CASE:¹⁴⁸ "IF HE HAD TOLD ME EARLIER ABOUT [THE DECISION NOT TO EXTEND MY CONTRACT], I WOULD HAVE HAD A CHANCE TO FIND ANOTHER JOB."

Ágota worked as a kindergarten teacher on a fixed-term contract, that the director of the kindergarten extended once and planned to renew it in the future. When Ágota first became pregnant, she informed the director and also the mayor who oversaw the institution. Following her miscarriage and return to work, Ágota mentioned to the director that she wanted to have a child in the future, information which as well reached the mayor. "Two months before my contract ended, the council decided not to extend it. As I learned, the mayor told the council that it wasn't worth renewing it, as I sooner or later would go on maternity leave," Ágota told Amnesty International. The mayor failed to inform Ágota about the decision following the meeting, she only learned about it less than a month before her contract ended. "If he had told me earlier about [the decision], I would have had a chance to find another job. However, as a kindergarten teacher, it wasn't possible to find anything when the school year started." Soon after in a one-to-one meeting, Ágota explained to the mayor that her pregnancy was recently confirmed. She asked him for a contract extension of six months, if no renewal was possible, to qualify her for maternity benefits and services of the social security system. "The mayor replied that the council had already decided, and that he would not extend my contract."

Women employed under other types of agreements such as agency contracts shall also be protected, as the CJEU confirmed, stating that a "worker" shall mean every individual that executes real and valid work, and that employment relationships are characterized by a person offering their services to the benefit and under the guidance of another person for a set amount of time, for which they get a reward.¹⁴⁹

In accordance with this, the Equal Treatment Act prescribes that employers in respect of "other relationships aimed at work",¹⁵⁰ that do not fall under the remit of Labour Code or other key laws regulating employment relationships,¹⁵¹ shall observe the principle of equal treatment.¹⁵² Moreover, the Act explicitly provides that a direct or indirect discrimination of an employee "in establishing and terminating the employment relationship or other relationship related to work" is considered a violation of that principle.¹⁵³



KARINA'S CASE:¹⁵⁴

Few years ago, Karina had been working for an educational company on an agency-type contract for a few months. Her employer was satisfied with her performance and briefly mentioned to her that they would like to hire her on a long-term contract, as there would be more projects she could help with. "Once I told them I was pregnant, at the next opportunity they said that, after the project I was working on terminates, they won't be able to work with me anymore." Her project finished, and she had to go. She was three months pregnant. Because she was not insured anymore and previously also worked on projects, including some work abroad, she was not eligible for crucial in-work family benefits.¹⁵⁵

Besides the fact that an unlawful dismissal or no extension to a contract due the employee's pregnancy may have harmful impacts on the physical and mental state of expectant workers, they might also lose entitlement to certain social security family benefits¹⁵⁶ if they do not manage to find another job or their baby

¹⁴⁸ The case was obtained from a legal expert of the Equal Treatment Authority during an interview, on 24 January 2020.

¹⁴⁹ C-66/85, *Deborah Lawrie-Blum v Land Baden-Württemberg* (ECLI:EU:C:1986:284), para. 16. and 17., at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61985CJ0066>, and C-138/02, *Brian Francis Collins v Secretary of State for Work and Pensions* (ECLI:EU:C:2004:172), para. 26., at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62002CJ0138>.

¹⁵⁰ Section 3(b) of the Equal Treatment Act. Agency-type contracts fall under "other relationship aimed at work", which is regulated by Chapter XXXIX of Act V of 2013 on the Civil Code, at: <https://net.jogtar.hu/jogszabaly?docid=A1300005.TV>. (Civil Code)

¹⁵¹ See text box on page 24 describing the laws regulating employment.

¹⁵² Section 5 of the Equal Treatment Act.

¹⁵³ Section 21 of the Equal Treatment Act.

¹⁵⁴ Amnesty International interview with "Karina", 24 February 2020.

¹⁵⁵ She did not have an uninterrupted working relationship and the adequate number of working days with the employer to be considered as insured. For details, see the next footnote.

¹⁵⁶ The monthly infant-care subsidy and childcare subsidy are granted to mothers who had had insurance coverage for at least 365 days over a period of two years prior to the birth of her child – which means they were employed –, based on Section 40 and 42/A of Act on the Services of the Compulsory Health Insurance System respectively, and Section 6 of Act CXXII of 2019 on the Eligibility for Social Security Benefits and their Financing, at: <https://mkogy.jogtar.hu/jogszabaly?docid=A1900122.TV>. In case of workers with agency-type contracts (or agents), in order to receive the childcare subsidy, besides the above requirement, their income from the activities covered by the mentioned

is born over 42 days following the termination of their employment (and thus that of the insurance coverage).¹⁵⁷ Finding a job, however, is very difficult in Hungary in advanced stage of a pregnancy.¹⁵⁸ These expectant women would only be eligible for universal benefits, such as the maternity support allowance (a one-off payment of HUF 64,125 {EUR 191.14}), the family allowance (a monthly benefit of at least HUF 12,200 {EUR 36.36} for one child) and the childcare allowance (a monthly benefit of HUF 28,500 minus 10% for pension contribution {EUR 84.95} per child).¹⁵⁹ They have not been raised since 2008. As the above benefits for women not meeting the aforementioned criteria are very low comparing with what higher-income women and those in employment can receive, the law disproportionately impacts women with low incomes and those from disadvantaged backgrounds.¹⁶⁰ Moreover, by not providing adequate financial support, the Hungarian law does not comply with the ILO Maternity Convention, which requires that women, who do not meet the conditions to qualify for cash benefits, shall be entitled to adequate benefits out of social assistance funds, subject to a means test.¹⁶¹

3.2.3 DISREGARDING THE DANGERS OF HIGH-RISK PREGNANCY AND ITS HEALTH-RELATED AND FINANCIAL CONSEQUENCES

Expectant women with high-risk pregnancy are in an even more vulnerable situation. Therefore, Hungary under international law is required to guarantee the same protections against employment discrimination and unlawful dismissal to these workers as for any other pregnant workers,¹⁶² and even go one step further to protect them.¹⁶³



SZABINA'S CASE:¹⁶⁴

Szabina worked in the public education sector with a two-year fixed-term contract. Her employer planned to renew the contract and assigned her to classes in the following year. When she revealed she was pregnant, the employer decided not to extend her contract. She had a high-risk pregnancy: “During a school trip, I needed to come home as I felt constantly queasy and threw up many times a day. Based on that, my employer said that I was not reliable; that was also the explanation for my dismissal,” Szabina told Amnesty International. “I was five months pregnant when the contract ended and, of course, could not find another job”. Because she was not insured anymore, she did not receive infant-care and childcare subsidies.¹⁶⁵ “That is when my employment trial started, and in 1.5 years, we haven’t even managed to get to the essential part of the whole process!”

International law requires states to put in place additional measures to provide women with high-risk pregnancy with adequate protection in their workplace.¹⁶⁶ On production of a medical certificate, expectant mothers with high-risk pregnancy shall be granted leave before or after the maternity leave period.¹⁶⁷ According to Hungarian law, pregnant women who cannot carry out their job and do not receive infant-care subsidy are considered incapable of working,¹⁶⁸ and are exempted from the requirement of availability for work and from work duty.¹⁶⁹ For the period they cannot perform their work-related duties, they are also

contract shall reach 30% of the prevailing minimum wage, or one-thirtieth of the said minimum wage for each calendar day, to be insured and thus, to qualify for those benefits (Section 6(b) and (f) of Act on the Eligibility for Social Security Benefits and their Financing). While the childcare subsidy can also be requested by the other parent if they fulfil the necessary requirements for eligibility, the infant-care subsidy can only be granted to the mother (expect in case of a single father). See details in Chapter 1.3. of Background section.

¹⁵⁷ Article 40(1) of Act on the Services of the Compulsory Health Insurance System.

¹⁵⁸ Amnesty International interviews with victims of gender-based discrimination, women who want to return to the labour market following maternity leave and employment law experts, between January and March 2020.

¹⁵⁹ See details of the family benefits in Chapter 1.3 of the Background section.

¹⁶⁰ Ibid.

¹⁶¹ Article 6(6) of ILO Maternity Protection Convention No. 183.

¹⁶² Article 8 and 9 of ILO Maternity Protection Convention No. 183.

¹⁶³ See specific articles related to illness and complications, such as Article 5 of ILO Maternity Protection Convention No. 183 and Article 4 and 5 of EU Directive 1992/85/EC.

¹⁶⁴ Amnesty International interview with “Szabina”, 10 February 2020.

¹⁶⁵ See the previous subsection for more details on qualifying for these benefits.

¹⁶⁶ See specific articles related to illness and complications, such as Article 5 of ILO Maternity Protection Convention No. 183 and Article 4 and 5 of EU Directive 1992/85/EC.

¹⁶⁷ Article 5 of ILO Maternity Protection Convention No. 183.

¹⁶⁸ Section 44 b) and 46 of Act on the Services of the Compulsory Health Insurance System.

¹⁶⁹ Section 55(1) of the Labour Code.

entitled to sick pay.¹⁷⁰ This system, however, disadvantages women, because workers with high-risk pregnancy are not granted by law the fifteen additional working days of sick leave per calendar year that those employees are eligible for who are incapacitated to work due to illness.¹⁷¹ While the payment granted for sick employees during those fifteen days is more generous (at a rate of 70% of the worker's absentee pay),¹⁷² it is currently covered by the employer. These additional fifteen working days should also be available to those employees who are incapacitated to work due to high-risk pregnancy. In order to relieve the employer, the state should cover these costs, as in the case of sick pay. The ILO Maternity Convention also stipulates that the benefits women with high-risk pregnancy receive due to their incapacity to work cannot be lower than the payment for sickness-related incapacity.¹⁷³

As it is uncertain for the employer how long the employee remains incapable of working before her maternity leave, many resort to terminating the employment with the pregnant employee, so they can look for a replacement.¹⁷⁴



BERNADETT'S CASE:¹⁷⁵

"After I became pregnant, the doctor advised me to stay at home for a few weeks to ensure that the pregnancy is going well," Bernadett told Amnesty International. She had had a miscarriage before, this made her pregnancy high-risk. "So, I called my employer to say I wouldn't come to work from the next day onwards, and then, I wasn't sure of coming back before maternity leave ... she was clearly shocked by that." Bernadett had been working for a small company in the education sector for six months and really liked her job. "We had a very good relationship with my boss." But with the miscarriage, and then with the pregnancy, the relationship changed. "After a few weeks, my employer asked me to come to the office to discuss some HR matters. Together with her partner, both lawyers, she welcomed me saying that if I went on maternity leave from their company, I'd make them bankrupt, as they calculated that I'd remain on maternity for a long time. ... I was just sitting there thinking that the only thing that matters to me is to have a healthy baby." Her employer explained that her salary was too high, so they could either sign a new contract with a lower salary for Bernadett to go on maternity leave and get the benefits, or they should terminate the employment relationship – otherwise the company becomes bankrupt. "In retrospect, I learned that my employer had been involved in legal disputes with many of her previous employees as she dismissed them once pregnant."

The above cases are not isolated ones. During the interviews, Amnesty International gathered information about other women who faced similar situations while having a high-risk pregnancy and learned about further cases in conversations with experts.¹⁷⁶ Moreover, the Equal Treatment Authority launched investigations into several cases of a similar nature, such as EBH/218/2019, where the employer terminated the contract of a cashier-shopkeeper during the probation period due to her pregnancy.¹⁷⁷

During the period women with high-risk pregnancy cannot work, their employer is required to pay one-third of the sick pay, while two-thirds are paid by the state.¹⁷⁸ For small companies, this might be a significant amount for a period of several months, although during maternity leave, employers do not directly pay any benefits to the women. This provision of the law, however, contradicts the ILO Maternity Protection Convention, which prescribes that an "employer shall not be individually liable for the direct cost of any

¹⁷⁰ Section 44 and 46 of Act on the Services of the Compulsory Health Insurance System. The sick pay depends on the salary of the employee and on the length of their social security coverage. Based on these, the sick pay could amount to 60% or 50% of the worker's salary minus the personal income tax. The rate depends on whether the individual has continuously been insured in the past 2 years or is hospitalised. (Prior to 2009, the amount of sick pay was 70% and 50% of the worker's salary.) The daily amount of the sick pay is also capped, it cannot exceed the one thirtieth of the double of the minimal wage, which is HUF 161,000 (EUR 480.17) in 2020, which makes the daily cap amounting to HUF 10,733.33 (EUR 32.01). For more details see: Hungarian State Treasury, *Sick pay and sick leave*, at: <https://egbiztpenzbeli.tcs.allamkincstar.gov.hu/ell%C3%A1t%C3%A1sok/betegs%C3%A9g-eset%C3%A9n/t%C3%A1pp%C3%A9nz-betegszabads%C3%A1g.html>.

¹⁷¹ Section 126(1) and (2) of the Labour Code.

¹⁷² This amount is subject to tax deduction. For details, see: Hungarian State Treasury, *Sick pay and sick leave*.

¹⁷³ Article 5-7 of ILO Maternity Protection Convention No. 183.

¹⁷⁴ Amnesty International interviews with victims of gender-based discrimination and employment lawyers, between January and March 2020.

¹⁷⁵ Amnesty International interview with "Bernadett", 01 January 2020.

¹⁷⁶ Amnesty International interviews with victims of gender-based discrimination, between January and March 2020.

¹⁷⁷ Hungary, Equal Treatment Authority Decision No. EBH/218/2019, available at: <https://www.egyenlobanasmod.hu/hu/jogeset/2182019>.

¹⁷⁸ Section 25(5) of Act on the Eligibility for Social Security Benefits and their Financing.

monetary benefit [in respect of the maternity leave or sick leave of their expectant employee]”, the state shall cover them “through compulsory social insurance or public funds”.¹⁷⁹

However, some employers even go a step further to prevent workers getting the support they are entitled to. In order for a pregnant woman to receive sick pay, she needs to submit a request to her employer. The company or institution then needs to send that to the competent Government Office, together with a document confirming that the woman works with them.¹⁸⁰ Amnesty International learned from interviews with victims and employment law experts, that there have been instances when the employer did not forward the request and the proof of employment relationship to the relevant authority, therefore, the woman did not receive any sick pay. As any proof that the employee can provide regarding her employment with that particular company is not accepted by the authority, she is wholly dependent on the employer as to whether she will receive the benefit she is entitled to by law.¹⁸¹

Under the Labour Code, when a pregnant worker is unable to carry out certain duties or to work in her original position for it might endanger her health or her pregnancy according to a medical opinion, but she does not need to go on sick leave due to high-risk pregnancy, the law requires that the employer offers her a job fitting her state of health, from the time her pregnancy is diagnosed until her child reaches one year of age.¹⁸² The pregnant worker shall be discharged from work duty if no position appropriate for her medical condition is available and should receive her basic salary.¹⁸³ The employee’s fitness for the job, including that of expectant employees, shall be examined regularly during the course of her employment.¹⁸⁴ In the case of pregnant women, this assessment is particularly important, and requires even more willingness on behalf of the employer to adjust the working conditions and duties accordingly. However, in order to save costs, employers often tend to put women on sick leave rather than discharging them from duty and giving them the basic salary. They do this by referring to Act on the Services of the Compulsory Health Insurance System.¹⁸⁵ This means, that the employer would pay only 60 or 50% of the pregnant employee’s salary as sick pay¹⁸⁶, rather than the actual basic salary she would be eligible for. The above, however, is contrary to Article 9 of the ILO Maternity Convention, as it restricts the employment opportunities and working conditions of women, hence discriminates against them.¹⁸⁷

3.2.4 REFUSAL OF ASSIGNMENTS, TRAINING OR OTHER CAREER DEVELOPMENT OPPORTUNITIES TO PREGNANT WOMEN

Withholding training or career development opportunities from an employee because of her pregnancy and maternity leave can also be discriminatory.



ANGELA’S CASE:¹⁸⁸

Angela worked for a government office in a bigger city, in an office-based role. “My manager clearly expressed to me that she wasn’t happy with my pregnancy. Moreover, she disapproved of my absences due to the obligatory antenatal medical appointments.” Angela decided to apply for an extra assignment at her workplace. “It was not a very popular task, nobody really wanted it, but I went for it. It meant some extra money, good before my maternity leave,” she told Amnesty International. “My manager didn’t choose me for the task, and when I asked her why, she replied that because I was pregnant.” Angela

¹⁷⁹ Article 6(8) of the ILO Maternity Protection Convention No. 183. The convention only allows exceptions if such monetary benefit paid by the employer “is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or it is subsequently agreed at the national level by the government and the representative organizations of employers and workers”.

¹⁸⁰ National Treasury Office, *Sick pay and sick leave* and also Wolters Kluwer, “Betegszabadság és táppénz a keresőképtelenség idejére”, 27 March 2019, at: <https://ado.hu/tb-nyugdij/betegszabadsag-es-tappenz-a-keresokeptelenseg-idejere/>

¹⁸¹ Amnesty International interviews with employment law experts and employment lawyers, between January and March 2020.

¹⁸² Section 60 of the Labour Code and also Section 49(1) and 50/A of Act XCIII of 1993 on Work Safety (1993. évi XCIII. törvény a munkavédelemről), available at: <https://net.jogtar.hu/jogszabaly?docid=99300093.tv>. (Act on Work Safety) Provisions of the latter act stipulate that an employee can only be hired for a position that does not threaten their health, reproductive abilities or the foetus.

¹⁸³ *Ibid.*

¹⁸⁴ Section 51(3) and (4) of the Labour Code and Section 54(2)-(3) of Act on Work Safety.

¹⁸⁵ Section 44(b) Act on the Services of the Compulsory Health Insurance System considers pregnant women incapacitated to work if they cannot carry out their work duties and do not receive infant-care subsidy. For details see footnote nr. 168 and 169.

¹⁸⁶ See footnote nr. 170.

¹⁸⁷ Puskás, *A várandós nők jogainak érvényesülése*, pp. 26.

¹⁸⁸ Amnesty International interview with “Angela”, 22 January 2020.

made a written complaint to the director, explaining that this treatment amounted to discrimination on the grounds of her pregnancy. “But, of course, my manager denied everything, and I did not have any witnesses, therefore, it had no consequences.” Her complaint did not lead to any investigation.

Employers should ensure training and development opportunities are mentioned and available to all staff, including expectant employees or those on maternity leave. Failure to do so amounts to discrimination.¹⁸⁹ While the Hungarian Labour Code or any other laws regulating employment relationships do not require employers to guarantee the same access to training, assignments and opportunities for all employees, the Equal Treatment Act specifies that any discrimination in relation to access to work, trainings and to the promotion system is unlawful.¹⁹⁰ Studies found that pregnant women often experience discrimination in relation to the above fields.¹⁹¹ Answers to the survey conducted by Amnesty International also showed that requests of pregnant women to attend a training are often refused, and that expectant employees might not be considered for promotion due to their condition.¹⁹²

This form of discrimination is, however, not unique to pregnant women: Amnesty International also learned that it happens to women who want to return to work after maternity leave.¹⁹³

3.3 DISCRIMINATION AGAINST WOMEN WITH YOUNG CHILDREN

Since 2010, the Hungarian government has taken steps to improve women’s employment, with a particular focus on those with young children. For this purpose, it has:

- Been increasing the number of nursery places across the country;¹⁹⁴
- Made the system of nursery provision more flexible by introducing different forms of facilities;¹⁹⁵
- Amended the Labour Code allowing women to work part-time covering 20 hours per week until their child reaches four years of age (or six if the woman raises three or more children);¹⁹⁶
- Introduced tax breaks for families depending on the number of children;¹⁹⁷
- Also introduced a social contribution tax break for employers that employ workers returning to work after maternity or parental leave as part of the so-called ‘Workplace Protection Action Plan’ that entered into force in January 2013.¹⁹⁸

¹⁸⁹ Sections 14(1) b) and 26 of Directive 2006/54/EC.

¹⁹⁰ Section 21 of the Equal Treatment Act.

¹⁹¹ Equality and Human Rights Commission, *Pregnancy and Maternity-related discrimination and Disadvantage: Experience of Mothers*, 2016, pp. 12., at: <https://www.equalityhumanrights.com/en/file/10511/download?token=fhYbcMUf> and also Hungler – Kende, *Nők a család- és foglalkoztatáspolitiká kerestűtűjűn*, pp. 16.

¹⁹² Amnesty International’s online survey conducted between January and February 2020. See Methodology.

¹⁹³ Amnesty International interviews with victims of gender-based discrimination, between January and March 2020, and also Szakszervezetek.hu, “Diszkrimináció a várandósság után”, 8 August 2015, at: <https://szakszervezetek.hu/hirek/391-diszkriminacio-a-varandossag-utan>.

¹⁹⁴ According to the government, the number of nursery places has increased by 58% since 2010. In 2019, about 18% of the children under three years of age were admitted into nurseries. The government plans to further extend the number of available places to reach 70,000 by 2022 (currently there are about 51,200 places). Source: Answers received from the Deputy State Secretariat for Family Affairs to Amnesty International’s list of questions, March 2020. However, based on number of places and the quality of childminding in them mainly due to staff shortages, still do not meet the needs, see Népszava, “3800 kisgyerek hiába akart bölcsődébe menni”, 3 February 2020, at: https://nepszava.hu/3065775_3800-kisgyerek-hiaba-akart-bolcsodebe-menni and also Népszava, “Bajban a peremkerületek bölcsődéi”, 1 November 2019, at: https://nepszava.hu/3055357_bajban-a-peremkeruletek-bolcsodei. See also footnote nr 68.

¹⁹⁵ Hungarian Government, Child-minding facilities, <https://csaladitudakozo.kormany.hu/gyermekek-napkozbeni-ellatasa>.

¹⁹⁶ Section 61(3) of the Labour Code.

¹⁹⁷ Since 2011, families are entitled to receive a tax break of HUF 10,000 per child after one child, HUF 20,000 per child in case of two children and 33,000 per child if the parents have three or more children. This tax break can be used by each parent and could be shared between them. National Tax and Customs Administration of Hungary (in Hungarian ‘Nemzeti Adó- és Vámhivatal’), “Alapvető tudnivalók a családi kedvezmény érvényesítéséhez”, 28. February 2019, at: https://www.nav.gov.hu/nav/szja_b/kezdvezmenyek/csaladi_kezvezmeny.html?query=csal%3%A1di-ad%3%B3kedvezm%3%A9ny.

There is no gender-disaggregated data on in what percentage men and women take advantage of this entitlement.

¹⁹⁸ If employers employ workers who are returning to work during or after the period they receive childcare subsidy, childcare allowance or a child education subsidy, they qualify for a social contribution tax break. During the first two years, employers shall only pay social contribution tax if the employee’s salary is higher than the minimum wage, for the part that exceeds that. During the third year, the employer pays half of the social contribution tax up to the minimum wage, and then the full tax for the remainder. In case of workers with

In 2019, as part of the so-called 'Family Protection Action Plan' supporting childbearing, the government introduced a lifelong waiver on personal income tax for women who have been raising or raised four or more children in their home. This measure has been in force since 1 January 2020.¹⁹⁹ Men are not entitled to this waiver and it cannot be shared with them, which reinforces gender stereotypes that it is the woman's role to raise children. This action plan, which provides generous financial support to families planning to raise children, puts a strong emphasis on women's role as child bearers and "risks instrumentalizing women as means of implementing the government's goals for demographic and immigration policies".²⁰⁰ Although this plan was not designed to address injustices related to women's return to the labour market following maternity leave, it was not accompanied by any substantive and effective measures that could do that.

At the same time, there have been very few steps taken to encourage men to share childcare, household and other care duties with women. There have been a few positive measures but they have not been accompanied by awareness raising campaigns or other activities among the general public and the employers, that would have highlighted the importance of men's involvement, or changed stereotypical perceptions of gender roles.²⁰¹ Those measures include the following:

- Both parents are entitled to two days of paid holiday for one child; four working days for two children and a total of seven working days for more than two children under sixteen years of age. Both parents can use these days, also potentially at the same time.²⁰²
- Male employees qualify for five working days of paternity leave (seven days in the case of twins) – with some exceptions of certain government employees receiving eight days²⁰³ (ten days for twins) – that can be used within the first two months following their child's birth. For that period, they receive absentee pay. In contrast to Directive 2006/54/EC, these employees are not protected against dismissal for exercising the above right, and the law does not provide for the entitlement to return to their jobs or an equivalent position with no less favourable terms and conditions.²⁰⁴
- Men can also go on sick leave in case their child becomes sick and are entitled to sick pay for caring for a child.²⁰⁵
- Men are also entitled to receive childcare subsidy and childcare allowance while on parental leave. Moreover, they can also choose to receive childcare subsidy and return to the labour market, after the baby becomes six months old (a policy called GYED Extra).²⁰⁶ But contrary to women, men do not enjoy employment protection should they choose the above option.
- Both parents can take parental leave (the so-called leave of absence taken without pay for caring for a child), up to the child's third birthday. However, if both parents decide to take this leave, only one of them is entitled to social security payments, and only the mother has a right to job protection, which is a clear disincentive for men to go on this leave.²⁰⁷

Another missed opportunity to encourage men to play a bigger role in childcare is that the law does not allow for the sharing of maternity leave or transferring part of the parental leave to the other parent. It is usually the woman who takes parental leave.²⁰⁸

Despite the positive measures mentioned above and some further opportunities²⁰⁹ that could easily be taken advantage of if there was political will, the government continues to not seriously address the discrimination women face in the labour market following their return to work, including by introducing measures that

three or more children the same rules apply for three and then two years respectively. Csalad.hu, "Munkahelyvédelmi Akció", 21 Feb 2020, available at: <https://csalad.hu/tamogatasok/munkahelyvedelmi-akcio>. The csalad.hu website belongs to the Hungarian government.

¹⁹⁹ Csalad.hu, "Négy- vagy többgyermekes édesanyák személyi jövedelemadó-mentessége", 18 Feb 2020, at:

<https://csalad.hu/tamogatasok/negy-vagy-tobbgyermekes-edesanyak-szemelyi-jovedelemado-mentessege>.

²⁰⁰ Commissioner for Human Rights of the Council of Europe, *Report following her visit to Hungary*, pp. 37.

²⁰¹ Göndör, *Munka és család a munkajog tükrében*, pp. 27-28.

²⁰² Section 118(1) of the Labour Code. In case of children with disabilities the two days extra holiday shall be increased by two additional working days per child, as per subsection (2).

²⁰³ See Chapter III of the Background section.

²⁰⁴ Article 16 of the Directive 2006/54/EC.

²⁰⁵ Section 44 of Act on the Services of the Compulsory Health Insurance System.

²⁰⁶ GYED Extra was first introduced in 2014, allowing parents to return to work while receiving childcare subsidy or childcare allowance following the first birthday of the child. This was then modified by the government in 2016, allowing parents better balance work and family life. The number of working hours is not limited.

²⁰⁷ See section 65(3/C), 128 and 130 of the Labour Code and also HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp.11. In case of a single father, he can enjoy equivalent job protection.

²⁰⁸ Based on data of the National Treasury Office obtained from the Ministry of Human Capacities, in 2018, only 7.8% of those parents who took childcare allowance or childcare subsidy during child-related leaves were men in 2018. See also HRC, *Report of the Working Group on the issue of discrimination against women on its mission to Hungary*, pp.11.

²⁰⁹ See the text box on women in rural areas on page 38.

would dissuade employers from treating pregnant women and women with young children less favourably than others. It is, however, recognised that these longstanding problems predated the current government and their taking power. In addition, during and following the current COVID-19 pandemic, when several hundred thousands of people risk losing their jobs, especially those who cannot afford working from home or who need to take care of the children as nurseries, kindergartens and schools are closed, the government would need to make efforts, in consultation with employee representative bodies and employer organizations, to support workers' return to their workplace or to the labour market, including women with young children.

3.3.1 DISREGARDED OBLIGATIONS OF THE EMPLOYER WITH RESPECT TO THE EMPLOYEE'S PREVIOUS POSITION FOLLOWING THE EMPLOYEE'S MATERNITY OR PARENTAL LEAVE

The Labour Code prescribes that "employer[s] may not terminate the employment relationship by notice during maternity leave and during a leave of absence taken without pay for caring for a child."²¹⁰

In line with Directive 2006/54/EC and 2010/18/EU, following their maternity and parental leave, employees shall be entitled to return to their position or to an equivalent or similar role, which requires similar qualifications, experience and knowledge, and provides similar, but no less favourable terms and conditions. However, while Directive 2006/54/EC stipulates that workers shall "benefit from any betterment of their working conditions to which [they] would have been entitled during [their] absence",²¹¹ the Labour Code only requires employers to make an offer to their employee for a wage adjustment following the above leaves. By doing so, employers should take into consideration the average annual wage improvement for workers in the same position. In the absence of such workers, the rate of actual annual wage improvements by the employer shall be applied.²¹² In case, however, the employer fails to meet this obligation, there is no sanction prescribed by the law. In this context it is not surprising that both employment law experts and employees that Amnesty International interviewed said that employers are frequently in breach of the law, in particular as employees are often not aware of any pay rise in their workplace, especially due to an inherent culture of secrecy around salaries in Hungary.²¹³

In addition, employees are often not acquainted with the employer's obligation to offer an equivalent role if their previous position is not available anymore, and employers choose to ignore them, therefore, often this does not happen.²¹⁴ If there is no opportunity available (or the returning employee does not know about it), or if the employee refuses the offer, the employer can terminate the employment by notice.²¹⁵ Nonetheless, the employer usually offers to terminate the employment by mutual agreement, which is financially more beneficial for the employer, as there is then no need to pay redundancy pay.



MARGIT'S STORY:²¹⁶

"My child was going to be three years old at the end of September, so I got in touch with my employer during the summer, expressing my intention to return to work at the beginning of October," explained Margit to Amnesty International. "So, October came, and they didn't tell me whether I could return to my previous role. I knew, though, that in the meantime, there have been some reorganizations at the company." Following the official return date, Margit took the holidays that accumulated during her absence. "I even had to take all my sick leave, as HR kept me in limbo." Finally, after two months of waiting, they told me that my position ceased to exist and that we should terminate my employment by mutual agreement," she said. "I was afraid that they would fire me if I didn't accept it, so I did. They even

²¹⁰ Section 65(3/B) of the Labour Code.

²¹¹ See Article 15 of Directive 2006/54/EC and Clauses 5 and 6 of the Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, 8 March 2010, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1158&from=EN>. (Directive 2010/18/EU)

²¹² Section 59 of the Labour Code.

²¹³ Amnesty International interviews, between January and March 2020 and Arsboni: "Titok-e a munkabér?", 8 March 2017, available at: <https://arsboni.hu/titok-e-munkaber/>. In case the employee suspects that there was a wage increase, but her wage was not adjusted accordingly on the grounds of her parenthood or sex-gender, they can bring the case to the Equal Treatment Authority or to a court.

²¹⁴ Amnesty International interviews with employment lawyers, January and March 2020.

²¹⁵ Section 66(3) of the Labour Code.

²¹⁶ Amnesty International interview with "Margit", 24 October 2020.

gave me some redundancy pay. However, I had no idea that they should have offered me an equivalent role. Therefore, I didn't pursue a complaint to seek remedy.”

Several victims of gender-based discrimination talked to Amnesty International about a similar situation they faced when returning from maternity leave: their position did not exist anymore, and they were either dismissed or their employment was terminated by mutual agreement. This also happened even if they were told a few weeks before returning that there would be no problem.

Besides the above, during child-related leave, employers can still terminate the contract of the worker with immediate effect.²¹⁷ In addition, if the employee returns, the employer can still dismiss them within a few weeks' time, as employees do not enjoy job protection beyond the third birthday of the child. As mentioned above, in case parents return to their job and receive childcare benefits before the child turns three years of age, they can be easily dismissed any time, as they do not have job protection. This could cause considerable hardship particularly for single parents, especially if they live in a rural area.

Those workers, however, who work in a so-called 'simplified employment', are not entitled at all to continue their employment following their child-related leaves.²¹⁸

WOMEN IN RURAL AREAS FACE PARTICULAR CHALLENGES

In some rural, impoverished areas of Hungary, women who become pregnant and go on maternity leave are even more exposed to discrimination upon their return to work. This is because employees without children have more flexibility and mobility, which matters in areas where employment opportunities are scarce, and villages are poorly connected to each other or to nearby cities.²¹⁹ Many of these women were informally employed before their maternity leave – therefore they did not have any employment protection or were covered by the social security system – so their position was less likely to be retained. One opportunity these women can take advantage of is to become an entrepreneur drawing on their particular skills and interests. With trainings and support from local NGOs²²⁰ and funding from state-run programs²²¹, they can establish their own business, although it can be challenging with the need to overcome a range of obstacles.

Another option that can help women in disadvantaged areas is the so-called 'wage-support for employment expansion'²²², that is available for employers who hire individuals who are inactive and disadvantaged on the labour market²²³ for a specific role with the help of the local employment centre. This amounts to a subsidy paying up to 50% of the full wage of the employee and the social contribution tax the employer would need to pay, for up to a maximum period of a year.

Following the COVID-19 pandemic, women with young children could face additional difficulties to return to their jobs – or to the labour market at all – as, at the time of writing, many workers have already lost their jobs due to the negative impacts of the public health emergency on the Hungarian economy.²²⁴ Like many European countries, Hungary is expecting periods of economic hardship, which are likely to particularly affect vulnerable groups, including women with young children. Moreover, many workers have been sent on

²¹⁷ Section 78 of the Labour Code.

²¹⁸ This special category of fixed-term employment is regulated by Section 201-203 of the Labour Code and Act LXXV of 2010 on Simplified Employment. This simplified employment covers seasonal work and short-term contracts in tourism and agriculture and may not go beyond 120 days per year. EC, *Country Report: Gender Equality, Hungary*, 2019, pp.36.

²¹⁹ Hungler – Kende, *Nők a család- és foglalkoztatáspolitikai keresztútján*, pp. 15.

²²⁰ Amnesty Interviews with leaders of women's empowerment organizations, so-called "Family and Careerpoints" (Család és Karrierpontok) organizing trainings on entrepreneurship for women in rural areas, January-February 2020. For further details on them, see: https://www.csaladbaratorszag.hu/csalad_es_karrierpont.

²²¹ For details on state support program to become an entrepreneur, see National Employment Service (in Hungarian 'Nemzeti Foglalkoztatási Szolgálat': https://nfsz.munka.hu/cikk/82/Altalanos_tajekoztato_a_vallalkozova_valast_elosegito_tamogatasrol.

²²² For details on the 'wage-support for employment expansion', see National Employment Service:

https://nfsz.munka.hu/cikk/91/Altalanos_tajekoztato_a_foglalkoztatasi_boviteset_szolgalo_bertamogatasrol.

²²³ This group includes, among others, women who want to return to work after maternity leave, individuals with low education and from disadvantaged background and long-term unemployed people.

²²⁴ Based on a recent market research by IPSOS, by 8 April 2020 7% of workers have lost their jobs due to the pandemic and its impact on the economy. Based on another research by GKI Gazdaságkutató Zrt., the unemployment rate could even rise to 10% in the coming months. See IPSOS, "Elérhető a válság hatásait fogyasztói szempontból vizsgáló kutatássorozat első heti riportja", 8 April 2020, at: <https://www.ipsos.com/hu-hu/elerheto-valsag-hatasait-fogyasztoi-szemponbol-vizsgalo-kutatassorozat-első-heti-riportja>, and also Index.hu, "GKI: Újabb 90-100 ezer ember veszítheti el az állását", 20 April 2020, at: https://index.hu/gazdasag/2020/04/20/gki_ujabb_90-100_ezer_ember_veszitheti_el_az_allasat/.

unpaid leave by employers, without any guarantees that they might return to their roles once the pandemic is over.²²⁵

3.3.2 PRESSURE EXERTED ON FAMILIES TO LEAVE CARING FOR A SICK CHILD TO WOMEN ONLY

By law, working parents whose child is sick and is younger than twelve years of age can take a sick leave and are entitled to statutory ‘sick pay to care for a child’ (gyermekápolási táppénz or GYÁP), if they are insured and pay health insurance contributions.²²⁶ The amount of sick pay to care for a child is equal to 60% or 50% of the worker’s salary.²²⁷

Table 3. Sick pay to care for a child for parents²²⁸

Number of days parents can receive sick pay to care for a child yearly (The year is referred to as the period of time between two birthdays of the child)		
Age of the child	Number of days for parents	Number of days for single parents
Younger than 1 year	Unlimited	Unlimited
Between 1-3 years of age	84	84
Between 3-6 years of age	42	84
Between 6-12 years of age	14	28

Parents might need to stay at home several days to care for their sick child when the child is very young, especially after the child starts attending childcare facilities as they can easily catch infections from their peers. Whilst men can also be affected, it is mainly women who usually go on sick leave with the child, therefore, discrimination disproportionately impacts women.²²⁹ Several interviewees told Amnesty International that employers do not tolerate workers’ frequent absences to care for their sick child, and can also dismiss these workers, as they perceive them a unreliable and unproductive.²³⁰



THE STORY OF VERONIKA’S HUSBAND:²³¹ “EVERYONE IN THE COMPANY THOUGHT AND CONVEYED TO MY HUSBAND THAT CARING FOR CHILDREN IS A WOMAN’S TASK.”

“My husband’s manager and colleagues had brought up several times that he didn’t hang out with them after work-related events, but rather returned to his family,” Veronika told Amnesty International. Her husband had worked for a small engineering company for four years and his employer was content with his work. “Within half a year, my husband stayed at home with our sick child twice. It was usually me who did that, so he could go to work. My husband was working among six men, who all had the view that women should care for sick children. Even when another colleague was on sick leave, that wasn’t a problem at all.” When Veronika’s husband stayed at home with their child for the second time, his manager rebuked him over the phone. When her husband enquired whether there was any problem with

²²⁵ Hungarian Civil Liberties Union, *Munkajogi útmutató koronavírus idejére*, 20 March 2020, at: https://ataszjelenti.blog.hu/2020/03/20/munkajogi_utmutato_koronavirus_idejere, and Penzcentrum.hu, “Ezt sokan nem tudják a fizetés nélküli szabiról és a home officeról: jogilag ez vár rájuk”, 20 March 2020, at: <https://www.penzcentrum.hu/karrier/ezt-sokan-nem-tudjak-a-fizetes-nelkuli-szabirrol-es-a-home-officerol-jogilag-ez-var-rajuk.1090797.html>. During unpaid leave, the employee does not receive a wage and have social insurance coverage. This also means that they are not eligible for medical care. However, they are still obliged to pay healthcare service contributions.

²²⁶ Section 44 c)-e) of Act on the Services of the Compulsory Health Insurance System and Hungarian State Treasury, *Sick pay to care for a child*, at: <https://bit.ly/gyermekapolasitappenz>. If the child is between 12 and 18 years of age, the employee could receive sick pay to care for a child if the authorities decide under the principle of equitable assessment that they can obtain it, as per Section 44 h) of the same Act. Besides the above conditions, in order to qualify for sick pay to care for a child, the parent needs to obtain a certification from the doctor determining the sickness of the child. If more children are sick in the same time, the parent can receive the allowance after only one child.

²²⁷ The lower amount applies if the parent has not been insured for over 730 days or the child is hospitalized.

²²⁸ Self-constructed table based on Section 46(1) b)-e) of Act on the Services of the Compulsory Health Insurance System. Single parent is defined by Section 5/B(e) of the same Act. See previous footnotes for details on this type of sick pay.

²²⁹ Napi.hu, “Szabadságot vesz ki vagy táppénzre megy, ha beteg a gyerek?”, 25 September 2015, available at: https://www.napi.hu/magyar_gazdasag/szabadsagot-vesz-ki-vagy-tappenzre-megy-ha-beteg-a-gyerek.603671.html.

²³⁰ Amnesty International interviews with victims and employment law experts, between October 2019 and March 2020 and also Equal Treatment Authority, *Employers’ attitudes regarding the employment of persons with protected characteristics*, 2013, pp. 20-22., at: https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/2_4_english_summary.pdf.

²³¹ Amnesty International interview with “Veronika”, 24 February 2020.

his performance on the job, his manager couldn't point to anything. The problem is that he is not a team player, the manager said. "They pestered him a lot, and if he hadn't quit, we had the impression that they would have continued bullying him until they would resign – or come up with a reason to dismiss him," – said Veronika.

Besides direct discrimination, working parents can experience indirect discrimination, too, on the grounds of caring for their sick child. This is well illustrated by the below case, where the Equal Treatment Authority confirmed that the employer violated the principle of equal treatment.



FEMALE WORKERS RECEIVING NO PREMIUM DUE TO ABSENCE TO CARE FOR SICK CHILD:²³²

Female workers claimed that they were victims of indirect discrimination when they did not receive a premium, the so-called 13th month's payment due to taking days off to care for their sick children. According to the company's collective working agreement, only employees whose absence from work did not exceed 25 days per year, were eligible to receive this premium. The days taken as annual paid holiday, work-related illness and inpatient hospital care were not included in the absence days. Sick leave and absence to care for a sick child, however, were calculated as absence from work in the collective agreement. Women with young children claimed that even though the conditions were seemingly impartial, they were disproportionately discriminatory to workers with children under the age of 12.

The Equal Treatment Authority noted in its decision that the disadvantages of being a woman and having a young child resulted in multiple and intersectional discrimination. Moreover, the Authority obliged the employer to reconsider the preconditions of eligibility of the 13th month's payment, eliminating the existing indirect discrimination, and prohibited the employer from further similar discriminatory practices.

3.3.3 NOT BEING ALLOWED TO WORK PART-TIME OR REMOTELY

“What hinders flexible working is that employers often pay for the 9-to-5 presence of the employees and not for the job done.”

Mária Hercegh, Leader of the Female Branch of the Hungarian Trade Union Confederation²³³, April 2020

Remote working and part-time work were introduced by the Labour Code in 2012.²³⁴ However, many companies have had difficulties in implementing these relatively new concepts in practice. Upon the employee's request, the employer can reduce their working hours from full-time to part-time to 20 hours per week following the employee's return to work from maternity or parental leave, before the child reaches the age of four years or in the case of three or more children until the youngest reaches the age of six.²³⁵ The law, however, does not allow for any other form of part-time employment or flexible working time, although it stipulates that “employers shall respond to the proposition of workers for the amendment of their employment contracts within fifteen days in writing.”²³⁶ It is completely at the employer's discretion whether they wish to accept the proposal for other forms of part-time arrangements. Several women interviewed by

²³² Equal Treatment Authority, Decision No. EBH/130/2017, available at: <https://www.equalitylaw.eu/downloads/4594-hungary-employer-obliged-to-reconsider-conditions-13th-month-payment-for-female-workers-pdf-149-kb>.

²³³ In Hungarian 'Magyar Szakszervezeti Szövetség'.

²³⁴ Chapter 87 of the Labour Code refer to remote working and various sections regulate part-time working.

²³⁵ Section 61(3) of the Labour Code. This reflects a recent change in the law taking effect on 1 January 2020. Previously this opportunity for part-time work was equal to the period of time when the parental leave ended, unless the child was permanently ill. It is yet to see what effect this change will have in the labour market where many employers have refused abiding by the law. The provisions appear in Sections 23/B.(1) and (7) of Act on the Legal Status of Public Servants, and in Sections 50(1) and (5) Act on Civil Servants of Public Services.

²³⁶ Section 61(2) of the Labour Code. This provision is, however, not present in the laws referred to in the previous footnote.

Amnesty International mentioned that amending the law by allowing women with children to work 30 or 35 hours per week would be of substantial help to them to balance family and work life.²³⁷

However, despite the above legal obligation to accommodate employees' requests for part-time work of 20 hours per week, many employers refuse to do so. Amnesty International interviewed several women – both in the public and private sectors – whose employers did not accept their request.



DORA'S CASE:²³⁸ “THE PART-TIME WORK IS SIMPLY NOT SUPPORTED IN THE INSTITUTION, AS IT HARMS THE ORGANIZATION.”

Dora, a middle manager of a public institution who is currently on parental leave with her second child, explained to Amnesty International that “following their maternity / parental leave, my colleagues didn't dare to request to work part-time, they were too afraid of the consequences”. Her manager was even discouraging employees to request part-time work as the institution could lose those positions.²³⁹ “If one position could be shared among two women with family responsibilities, that would be useful for everyone,” said Dora.

By not acting in accordance with the law, employers indirectly discriminate against workers with young children who consequently are often not able to return to work. Women employees and professionals working in human resources we interviewed said that many employers in Hungary – both in the public and private sectors – tend to only consider a “normal working day” of eight hours acceptable and “the only way to get work done”.²⁴⁰ The Labour Code does permit employment contracts for joint working amongst more than one employee.²⁴¹ Although this could potentially benefit both employers and employees with young children, it is very rarely applied in practice.²⁴² In addition, employers often do not trust that workers can be productive working reduced hours or remotely.²⁴³

Some positive examples exist amongst mainly multinational companies who have been more accommodating to requests for part-time and remote working²⁴⁴ and have organized workloads and schedules accordingly. Most employers, however, are not familiar with the concept, do not have the necessary communications and office equipment or do not trust that employees will effectively carry out their duties without supervision.²⁴⁵ Evidently, the possibility for remote working heavily depends on the sector, and in some fields is not even possible.²⁴⁶ However, where it is an option, refusing requests for remote working could also represent discrimination against women employees with children.²⁴⁷



CIVIL SERVANT WITH YOUNG CHILDREN REFUSED RIGHT TO WORK REMOTELY:²⁴⁸

A female civil servant with young children turned to the Equal Treatment Authority claiming that she was discriminated against based on her motherhood when, after returning from maternity leave, she requested to work from home 20 hours per week. This request complied with her previously agreed employment contract. The employer, a ministry, rejected the request, arbitrarily amended her contract,

²³⁷ Amnesty International interviews with victims of gender-based discrimination, between January and March 2020.

²³⁸ Amnesty International interview with “Dora”, 22 January 2020.

²³⁹ In case of positions of civil servants, the public institution receives the money for the salaries from the state.

²⁴⁰ Amnesty International interviews with both victims of gender-based discrimination and employment lawyers, between January and March 2020. See also statistics on rate of part-time employment in Hungary on page 9, in Background.

²⁴¹ Section 194 of the Labour Code. Where any one of the employees to the contract is unavailable, another worker to the contract shall fill in and perform the functions of the job as ordered. The scheduling of work shall be governed by the provisions on flexible working arrangements.

²⁴² Previously, the law allowed that employers who hire two part-time employees for a full-time position could be exempted for paying after contributions for both staff members. Now, this applies only in certain cases: if both people are of ‘jobseekers from disadvantaged background’, the employer could be exempted from paying all costs of employment for a maximum of one year, if the employer took advantage of the so-called ‘wage-support for employment expansion’ offered by the state. For details, also see footnotes 222-223.

²⁴³ Ibid and also Wolters Kluwer, “A távmunka jelene és jövője”, 22 February 2019, at: <https://jogaszvilag.hu/a-tavmunka-jelene-es-jovojel/>.

²⁴⁴ Remote working is regulated by Sections 196-197 and 96 (regulating flexible working arrangement) of the Labour Code.

²⁴⁵ Lipták – Maticskákné, *The employment situation and opportunities of women with young children*, pp. 47, and footnote nr. 229.

²⁴⁶ Hungarian Central Statistical Office, Remote working and ‘home office’ (own translation), at: <https://www.ksh.hu/docs/hun/xftp/doszaki/munkerohelyz/tavmunka/index.html>.

²⁴⁷ See the Decision of the Equal Treatment Authority No. EBH/57/2017 in the next paragraph.

²⁴⁸ Equal Treatment Authority, Decision No. EBH/57/2017, at: <https://www.egyenlobanasmod.hu/hu/jogeset/ebh572017>. In case of civil servants working for the government, Section 125-6 of Act CXXV of 2018 on the Governmental Administration regulates remote working.

and ordered her to work in the office full-time. The Equal Treatment Authority established direct discrimination and found that the employer failed to provide any reasonable justification for not allowing for the complainant to work from home when she returned from maternity leave.

This attitude towards remote working, however, might change due to the recent COVID-19 pandemic – still ongoing at the time of writing – which has required many companies to experiment with remote working on a large scale in order to survive and keep employees safe.²⁴⁹ This might, however, also lead to new types of abuse by employers, due to some loopholes regarding the regulation around remote working, as some trade union leaders interviewed by Amnesty International pointed out.²⁵⁰

Despite the multiple discriminatory practices and breaches of both Hungary's domestic law and its international and regional human rights obligations detailed in this chapter, many women do not seek remedies and reparation for the damage they suffered for a variety of reasons, as the next chapter demonstrates.

²⁴⁹ Wolters Kluwer, "Dolgozzunk otthonról a koronavírus idején!", 19 March 2020, <https://ado.hu/munkaugyek/dolgozzunk-otthonrol-a-koronavirus-idejen/>.

²⁵⁰ Amnesty International interviews with trade union leaders, April 2020.

4. DOMESTIC REMEDIES

“Somehow, it’s entrenched in people, it’s indoctrinated in us that you cannot win against an employer.”

Ágnes Repka, human resources expert and employment law advisor, March 2020

Hungary is obliged under EU and international law to guarantee accessible, affordable and effective compensation or reparation for the loss and damage individuals suffered by the discrimination in the employment field on grounds of sex, parental status or any other protected characteristics, in a way which is dissuasive (has a deterrent effect) and proportionate to the damage suffered.²⁵¹

This is given effect under Hungarian law, in cases of discrimination in employment, through two main avenues: the opportunity to file a complaint with the Equal Treatment Authority²⁵²; and/or to make a claim to the appropriate regional court (from 1 April 2020 these courts handle employment claims which were previously heard by the so-called ‘administrative and labour courts’).²⁵³ Despite the fact that labour inspectorates can also start proceedings against employers concerning violations of labour rights, since 2012 they no longer have the competence to investigate allegations of employment discrimination.²⁵⁴

However, victims of gender-based discrimination often do not seek legal remedies, due to a variety of reasons. Based on the responses received in our questionnaire²⁵⁵, about one-third of the women who stated they had experienced gender-based discrimination in the workplace did not want to launch a formal procedure against their employer, as they feared negative consequences and retaliation.²⁵⁶ These results have been confirmed in various interviews with employment lawyers and labour rights experts, showing that victims of gender-based employment discrimination very often do not make internal complaints – those complaint mechanisms often do not exist or complaints are not properly investigated and acted upon – or launch external legal procedures, due to fear of retaliation.²⁵⁷ If individuals do decide to start any proceedings it most commonly occurs after their relationship ends with that particular employer.²⁵⁸

Awareness of the anti-discrimination legislation and available legal remedies remains low, as the findings of joint research by the Equal Treatment Authority and the Institute for Sociology of the Hungarian Academy of

²⁵¹ Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), 5 July 2006, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>, and also Article 13 of the European Convention on Human Rights of the Council of Europe, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf. Article 2(1) of the ICESCR also makes clear that there is an obligation on States Parties to use ‘all appropriate means, including particularly the adoption of legislative measures’ in order to fully realize all the rights contained in the Covenant, which covers accessible, affordable, timely and effective remedies, as the CESCR General Comment 9 explains. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, 3 December 1998, E/C.12/1998/24, para. 3., available at: <https://www.refworld.org/docid/47a7079d6.html>.

²⁵² Chapter 2, Article 12. of the Equal Treatment Act.

²⁵³ Besides the above two options, victims can also turn to labour inspections and to the Commissioner for Fundamental Rights (the Hungarian Ombudsman). However, as these avenues are rarely used by victims of gender-based discrimination to assert their rights and are not able to provide proportionate, effective and dissuasive remedies, they are not in scope of the current research.

²⁵⁴ ILO, Observation (CEACR) concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), adopted 2017, at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3340458.

²⁵⁵ Amnesty International’s online survey conducted between January and February 2020. See Methodology.

²⁵⁶ Puskás, *A várandós nők jogainak érvényesülése*, pp. 25 and Mészáros, *A várandós munkavállaló tájékoztatási kötelezettsége*, pp. 170.

²⁵⁷ Amnesty International interviews conducted between September 2019 and February 2020.

²⁵⁸ *Ibid.*

Sciences²⁵⁹ also show. Based on a representative survey they conducted in 2019, only 40% of the respondents were familiar with the Equal Treatment Authority and only just over half – 51% – thought that there was a law that protected people from discrimination. Regarding awareness of the Equal Treatment Authority, this is almost the same result as the respective survey data from 2017 (42%), and an actual decrease from 2013 (46%). Regarding familiarity with the existence of the legislation, awareness has increased from 2017 (44%), but is still lower than the rate for 2010 and 2013 (59%). The authors of the survey concluded that the high awareness of the legislation in previous years could be attributed to intense nationwide awareness raising and communication campaigns focusing on the activity of the Authority and the principle of equal treatment.

4.1 SUBMITTING A COMPLAINT TO THE EQUAL TREATMENT AUTHORITY

According to the Equal Treatment Act, victims of gender-based discrimination can launch a complaint with the Equal Treatment Authority²⁶⁰ if they have suffered a disadvantage or a less favourable treatment by an employer or at a workplace in a direct or indirect manner on grounds of their gender or of being a mother or a father, than any other person with a comparable education, level of knowledge, skills and experience and in a comparable position.²⁶¹

Individuals can submit claims against state and local government organizations, organizations exercising official powers or performing public services (including public educational, social, cultural and health services), law enforcement bodies and budgetary agencies concerning cases involving discrimination. The Authority can also investigate complaints and reports – but in limited areas – against the private sector, for example in cases of employment discrimination that fall under the remit of different laws regulating employment relationships, in respect of the employer,²⁶² such as in cases of unlawful dismissal based on the grounds of pregnancy.

4.1.1 THE AUTHORITY LACKS HUMAN AND FINANCIAL RESOURCES

The Equal Treatment Authority's jurisdiction extends across Hungary, and its nationwide network of regional equal treatment consultants has significantly expanded the Authority's outreach and helped raise awareness of the body as an avenue for legal remedy in the regions. Nevertheless, out of the number of complaints the body handled between 2010 and 2018 (a yearly average of 439.5 cases), the number of cases where discrimination is found (on average 32.25 per year during the same period) or reaching a friendly settlement (on average 29.25 per year), were low (7.3% and 6.6% respectively).²⁶³ The number of cases of established discrimination on grounds of gender or motherhood (pregnancy) is even lower.²⁶⁴

The most probable reasons for the low numbers are a low level of awareness among the population about the area of non-discrimination²⁶⁵ and that many potential individuals who suffered alleged discrimination are not able to effectively present their case in a hearing and assert their rights.²⁶⁶ Moreover, as legal experts of the Authority explained to Amnesty International, the body rejects a good portion of the claims it handles, partly because it cannot establish a clear link between their protected ground and the discrimination suffered, or the employer manages to clear itself. While these experts confirmed that there are cases where

²⁵⁹ Equal Treatment Authority and Centre for Social Sciences, Institute for Sociology, Hungarian Academy of Sciences, *Personal and social perception of discrimination and legal awareness of the right to equal treatment, Survey findings*, 2019, available at: https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/EBH_2019_FINAL_EN_20191208%20Final_isbn_online.pdf.

²⁶⁰ The Equal Treatment Authority (in Hungarian Egyenlő Bánásmód Hatóság (EBH)), was set up in 2005, as a requirement for Hungary's accession to the European Union.

²⁶¹ The Authority also investigates complaints from victims of discrimination on other protected grounds, such as disability, age etc, however, those are not in the scope of this research. For details, see Activity of the Equal Treatment Authority, available at: <https://www.egyenlobanasmod.hu/index.php/en/basic-page/important-information-procedure-equal-treatment-authority>.

²⁶² See text box on different laws related to employment on page 24.

²⁶³ Statistics on complaints are published on the Authority's website, but are not disaggregated by sex, protected grounds and fields of discrimination (i.e.: employment): <https://www.egyenlobanasmod.hu/en/ev-es-tajekoztato> and also European Commission, European Network of legal experts in gender equality and non-discrimination, *Country Report: Non-discrimination, Hungary*, 2019, pp. 11., at: <https://www.equalitylaw.eu/downloads/5001-hungary-country-report-non-discrimination-2019-pdf-1-80-mb>. (EC, *Country Report: Non-discrimination, Hungary*, 2019)

²⁶⁴ The statistics available are very limited in this regard, however, between 2016 and 2019, there were on average 5 cases where the Authority established discrimination based on motherhood.

²⁶⁵ See the study referred to in footnote nr. 256.

²⁶⁶ Amnesty International interviews with legal experts of the Equal Treatment Authority, between January-March 2020.

individuals' claims have no merit, in other instances cases are rejected despite quite clear evidence of discrimination, as the claimant could not present their claim effectively.²⁶⁷

Since 2014, when a four-year programme that provided the Authority with extra funding ended,²⁶⁸ the institution has not been able to adequately perform some of its core functions or sustain the previous intensity of them, such as trainings for public institutions and bodies.²⁶⁹ In the past five years, the budget of the body has barely increased.²⁷⁰ In addition, the reduction of legal staff to seven – representing nearly a 50% cut in less than 10 years – has also made it difficult for the Authority to advance its work in monitoring the implementation of the principle of equal treatment, which requires the most capacity amongst the Authority's activities.²⁷¹ Moreover, it has been unable to sustain the previous level of training and workshop organization for state employees (including the police) and NGOs, and to run awareness raising campaigns for society, as during the four-year period of extra funding.²⁷² Furthermore, the Authority carries out very few *ex officio* procedures,²⁷³ which could reveal potential discriminatory practices by the Hungarian state, local governments, organizations exercising official authority or law enforcement organs.²⁷⁴ In its current state, however, human, technical and financial resources cannot be considered adequate as they do not allow the equality body to carry out each of its equality functions effectively, as prescribed in the Commission Recommendation on standards for equality bodies.²⁷⁵

4.1.2 THE AUTHORITY'S SANCTIONS ARE NOT DISSUASIVE ENOUGH

The Equal Treatment Act prescribes that the Authority in its decisions can sanction perpetrators. However, those punitive measures are neither sufficiently proportionate regarding the harm suffered by the victim nor dissuasive enough with respect to deterring future violations. In sum, the legal protection the Equal Treatment Act can provide is rather limited.²⁷⁶

First, the Authority tries to reach an agreement between the parties which is aimed at redressing the harm the victim suffered.²⁷⁷ If the two parties manage to reach a friendly settlement, the employer can voluntarily compensate the victim.²⁷⁸ If there is no agreement achieved and the Authority establishes an infringement on the principle of equal treatment, it can order the termination of the violation and prohibit the continuation of discrimination in the future. Two further sanctions that might have some wider deterrent effect are publishing the final decision declaring the infringement on the defendant's website, and on that of the Equal Treatment Authority, and imposing a fine of HUF 50,000 (EUR 165) to HUF 6 million (EUR 20,000) on the violator.²⁷⁹ However, the amount of the fine is not awarded to the victim for the suffered damage, but paid to the state, as per the Equal Treatment Act.²⁸⁰ The Authority can also apply different sanctions at the same time.

²⁶⁷ EC, *Country Report: Non-discrimination, Hungary*, 2019, pp. 122. and conclusions are drawn from statistics from the yearly reports on the Equal Treatment Authority's activities and from Amnesty International interviews with legal experts of the Equal Treatment Authority, between January-March 2020.

²⁶⁸ The so-called "Social Renewal Operational Programme 5.5.5/08/1 The fight against discrimination – changing the societal perception and strengthening the work of the Equal Treatment authority" (in Hungarian "TÁMOP-5.5.5/08/1 A diszkrimináció elleni küzdelem – a társadalmi szemléletformálás és a hatósági munka erősítése") that ran between 2009-2014 was supported by the European Commission and the Hungarian state.

²⁶⁹ EC, *Country Report: Non-discrimination, Hungary*, 2019, pp. 10 and Amnesty International interviews with legal experts of the Equal Treatment Authority and other employment law experts, January and February 2020.

²⁷⁰ Statistics on yearly income and expenditure are available in the yearly report on the Authority's work, published on its website: <https://www.egyenlobanasmod.hu/en/ev-es-tajekoztato>

²⁷¹ The number of staff members dealing with equality issues has dropped from 13 in 2010 to 7 in 2019. For some limited details on the number see: http://equineteurope.org/author/hungary_etc/, and also Equal Treatment Authority, *Information on the Authority's activities in 2016*, at: <https://www.egyenlobanasmod.hu/index.php/hu/ev-es-tajekoztato/tajekoztato-az-egyenlo-banasmod-hatosag-2016-evi-tevekenysegerol>.

²⁷² See the EC, *Country Report: Non-discrimination, Hungary*, 2019, and Amnesty International interviews with legal experts of the Equal Treatment Authority and other employment law experts, conducted between January and February 2020.

²⁷³ *Ex officio* procedures mean that the Authority can start proceedings without receiving notice of a particular discrimination case. They can be launched if the Authority learns about a particular circumstance that requires it to investigate or if a court or the law oblige it to start a procedure.

²⁷⁴ Section 15(5) of the Equal Treatment Act. The Authority is not authorized to proceed *ex officio* against other public organizations listed in the text or against private actors.

²⁷⁵ Paragraphs 1.2.2.(1) and (2) of the Commission Recommendation on standards for equality bodies, C(2018) 3850, 22.6.2018, available at: https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf.

²⁷⁶ EC, *Country Report: Gender Equality, Hungary*, 2019, pp. 10.

²⁷⁷ Section 16(13) of the Equal Treatment Act.

²⁷⁸ See EBH Decision No. 182/2019, when the employer agreed to employ the victim again following her dismissal during probation period due to her pregnancy or EBH Decision No. 283/2019, when the employer agreed to pay compensation following the dismissal of the victim due to her pregnancy during probation period. See both cases at: <https://www.egyenlobanasmod.hu/hu/jogesetek>. See also previous subchapter on the number of friendly settlements.

²⁷⁹ Section 17/A of the Equal Treatment Act.

²⁸⁰ Section 34(3) of the Equal Treatment Act.

When the Authority establishes that there has been a case of discrimination in employment, the defendant (the employer) may not be able to access funds and subsidies provided by the state such as job creation funds and job maintenance funds.²⁸¹ In addition, thanks to an internal registry that keeps records on cases that confirm violation of the principle of equal treatment, a higher fine can be imposed on employers that have a recent discrimination case confirmed by the Authority.²⁸² In addition, if an employer commits discrimination in the same domain within two years, and the Authority imposed a fine against it in its final decision and the procedures have been concluded (also in case when the decision has been appealed in a court and that procedure was concluded) – the employer should publish the Authority’s decision on its website.²⁸³ An additional favourable aspect of the Authority’s procedure is that, unlike the courts,²⁸⁴ the Equal Treatment Authority can without restriction use audio and video recordings as evidence in support of the discrimination claim.²⁸⁵

“It doesn’t matter whether it is a big or small company, discrimination can happen everywhere.”

Legal expert of the Equal Treatment Authority, January 2020

Despite the above, employment law experts told Amnesty International that these sanctions, even the imposition of public fines, do not necessarily stop companies or institutions from discriminating against pregnant women and women with young children, as they can afford to pay the fines.²⁸⁶ Companies are also aware that employees do not usually start legal proceedings due to the fear from retaliations.

4.2 SUBMITTING A DISCRIMINATION CLAIM TO COURT

Hungarian law also allows victims of alleged violations of the principle of equal treatment to make claims to regional courts, even if there is an ongoing procedure with the Equal Treatment Authority. Most individuals who seek remedy for the damage they have suffered choose this legal option, as they can provide real reparations for the victims, including compensation, and stronger sanctions. However, as detailed below, these court proceedings also have shortcomings.

Amnesty International’s survey showed that only 5.6% of all respondents (266) stated they would consider turning to an administrative and labour court if their rights were violated. Those who would seek legal remedies with the Equal Treatment Authority is only slightly higher at 8.6% whilst 7.1% would consider launching a procedure with both bodies. Out of those, however, who had actually suffered gender-based discrimination (85), only one person had made a claim to a court.²⁸⁷ The majority of those who suffered discrimination (61.2%) said that they did not start a proceeding due to fear of retaliation or as they did not believe it would help. These very low numbers are confirmed by official statistics on court cases.

4.2.1 LOW NUMBER OF CASES

Legal experts and employment lawyers interviewed by Amnesty International asserted that there has been a significant decrease in employment claims being taken to courts in the past few years.²⁸⁸ This is confirmed by court statistics for 2018, with the number of employment claims launched nationwide significantly

²⁸¹ In national tenders, the terms and conditions for applicants might include specific criteria of having no on-going legal proceedings concerning an omission or violation of any law by the company or concluded decision of any authority, including the Equal Treatment Authority, that confirms breaching the law. Amnesty International interviews with legal experts of the Equal Treatment Authority, January and March 2020.

²⁸² Section 17/A(3) of the Equal Treatment Act and Amnesty International interviews with legal experts of the Equal Treatment Authority, between January and March 2020.

²⁸³ Section 17/D(1) of the Equal Treatment Act.

²⁸⁴ Due to the GDPR legislation, the courts might not allow claimant to use recordings as evidence, they might fine the complainant or could even start a lawsuit for breaching the right to privacy of the defendant for not obtaining the latter’s consent when making the recording. Section 268-9 of the Code of the Civil Procedure.

²⁸⁵ Although the Code on Civil Procedure does not prohibit the use of voice and video recordings, however, if it is obtained in a unlawful way without the consent of the other party, the courts in practice might not allow their use during the hearing and require the use of other proofs. Amnesty International interviews with employment law experts, January and March 2020.

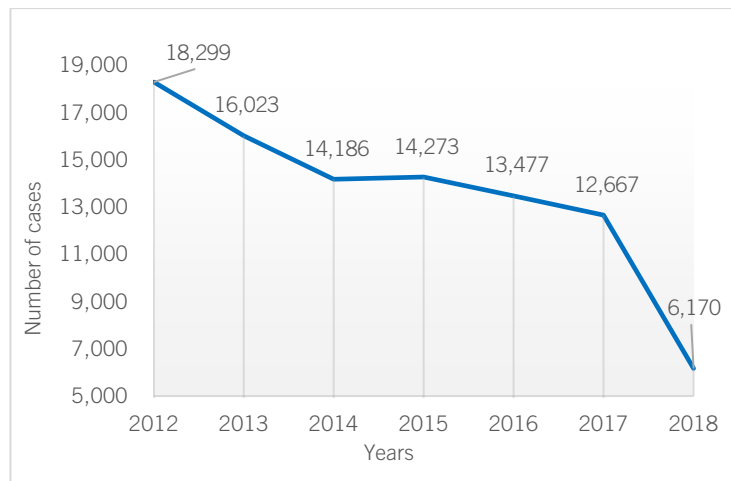
²⁸⁶ Amnesty International interviews with employment law experts, January and March 2020.

²⁸⁷ Amnesty International conducted an online survey between January and February 2020. See Methodology.

²⁸⁸ Amnesty International interviews with employment lawyers and employment law experts, between January and March 2020 and also Világgazdaság.hu, “Egyre kevesebben fordulnak munkaügyi bírósághoz”, 09 March 2018, at: <https://www.vg.hu/gazdasag/egyre-kevesebben-fordulnak-munkaugyi-birosaghoz-2-784709/>.

dropping in the past six years.²⁸⁹ The reasons for this are manifold. Besides the reclassification and reassignment of certain types of cases, including those concerning social security, pensions and labour inspections that entered into force on 1 January 2018,²⁹⁰ recent changes to the Code of Civil Procedure²⁹¹ have resulted in stricter rules for making a claim.

Graph 2: Number of filed employment cases per year²⁹²



Moreover, low labour rights awareness among workers, the scarcity of free legal aid and difficulties related to legal proceedings have also contributed to the decrease of employment cases.²⁹³

4.2.1.1. MAKING A CLAIM IS DIFFICULT AND COMPLICATED

“It is not possible to litigate effectively, if I am expected to formulate the statement of claim with the same amount of detail as the final judgment of the court.”

Employment lawyer, February 2020

According to the law, legal representation is not obligatory in employment disputes.²⁹⁴ Despite the fact that in theory claimants are able to assert their rights alone in court, in reality they are not able to do so, due to strict legal rules of making a claim and representing the case, which require legal expertise. This was confirmed in interviews with employment lawyers and labour rights experts, who told Amnesty International that the new Code of Civil Procedure has made it much more difficult to formulate and file a statement of claim. Besides the detailed presentation of the right to be enforced by specifying the legal basis, facts and evidence supporting the claim, the statement has to now also set out the legal arguments demonstrating the relationship between the right to be enforced, the statement of facts, and the claim.²⁹⁵ This, however, puts an unreasonable burden on the claimant’s party: according to the Equal Treatment Act, the defendant’s

²⁸⁹ Amnesty International requested detailed, statistical information on the number of employment cases between 2010-2019 from the Hungarian Academy of Justice, but to the date of writing, it has not received any. So, the numbers are based on compiled statistical data on employment cases between 2014-2018 (no data available for 2019), published on the National Judicial Office’s website: <https://birosag.hu/statisztikai-evkonyvek>. While the number of employment discrimination cases amounted to on average 36.75 yearly between 2014-2017, there is no data available on this for 2018 and beyond.

²⁹⁰ See information note on employment lawsuits on the National Judicial Office’s website: <https://birosag.hu/munkaugyi-2020-aprilis-1-jeto/>.
²⁹¹ Act CXXX. of 2016 on Code of Civil Procedure, at: https://nit.hu/translated/doc/J2016T0130P_20180701_FIN.pdf.

²⁹² Self-constructed graph based on the official statistical data on employment cases from the National Judicial Office’s website (see footnote nr. 286).

²⁹³ MÉRCE.hu, dr. Balczer Balázs, “Az a baj az új munkaügyi bíróságokkal, hogy már alig lesznek ügyeik”, 15 February 2020, available at: <https://merce.hu/2020/02/15/az-a-baj-az-uj-munkaugyi-birosagokkal-hogy-mar-alig-lesznek-ugyeik/>.

²⁹⁴ Section 513(2) of the new Code of Civil Procedure.

²⁹⁵ Sections 170-171 of the new Code of Civil Procedure list the required elements of a statement of claim and the necessary appendices.

party needs only to present evidence of a protected ground and that of the alleged discrimination, while providing the link and building arguments around it should lie on the other party.²⁹⁶

Moreover, all the relevant documents and evidence must be available at the time of claim submission, and filing of additional documents is often not possible. This requirement increases the chances of omissions during submission, which has contributed to courts rejecting a very high number of claims.²⁹⁷ Moreover, errors in statement preparation can also lead to an obligation to pay a financial penalty or to missing the deadline to submit outstanding evidence and/or to presenting the claim in a hearing.²⁹⁸

Based on the above, claimants require the help of employment lawyers. As interviewees said, the new rules also require deep knowledge of the new provisions and more time from a legal representative to draft the statement of claim and prepare for the hearing. This on the one hand has led to many lawyers ceasing to take on employment lawsuits, and on the other hand starting legal proceedings has become more expensive for claimants.

4.2.1.2. MAKING A CLAIM IS NOT POSSIBLE FOR ALL VICTIMS

Hungary is required under EU law to ensure that judicial proceedings “are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them”.²⁹⁹ However, many cannot afford to start legal proceedings due to high costs.

By law, the claimant can request an exemption from paying court fees³⁰⁰ if their salary does not reach a certain level set by the Minister of Justice and Law Enforcement Decree 73/2009. (XII. 22.).³⁰¹ However, even if the court grants the exemption, claimants still need to pay their lawyer. In addition, if the complainant loses in court, they are also required to cover the other party’s legal costs. These expenses can be very high and not affordable for many victims of discrimination or other rights violations.

“[...] many clients do not have the amount of money for me to work only on their case, preparing a statement of claim 5 to 8 pages long, full of references to judicial decisions, etc.”

Employment lawyer, February 2020

As the formulation of the statement of claim has become very demanding, it can take around eight hours for lawyers to prepare it, for a standard charge of up to HUF 80,000 (about EUR 236). In addition, together with the costs of at least four hearings of the procedure on the first instance, the total lawyer’s fees can amount to HUF 300,000 (about EUR 885) or even more for an employment claim (including the drafting of the statement of claim).³⁰² As mentioned above, claimants need legal expertise to represent themselves in court due to the aforementioned strict legal rules. As lawsuits can last up to one-and-a-half years at first instance only, the accumulated legal fees coupled with additional costs stemming from travelling to hearings, etc., can significantly increase a claimant’s costs. Even if they win the lawsuit, their prospects for adequate compensation – due to the upper limit and special rules – and thus being able to cover the accumulated costs, are slim.³⁰³

Victims of gender-based discrimination or other rights violations may be entitled to state-funded legal aid at a civil or administrative and labour court, depending on their financial status. However, the threshold for

²⁹⁶ Section 19 of Equal Treatment Act.

²⁹⁷ Amnesty International interviews with employment lawyers and employment law experts between January and February 2020.

²⁹⁸ Ibid.

²⁹⁹ Section 17(1) of Directive 2006/54/EK.

³⁰⁰ The court fees consist of process fees, experts’ fee, witness fee, any cost covering visiting the site and translator’s fee. The process fee is 6% of the value of the subject matter of the case. In case an employment relationship is the subject matter itself, the process fee amounts to the employee’s one-year absentee fee. If the lawsuit concerns a pecuniary claim, that becomes the subject matter. If the employee is claiming a salary loss, the subject matter would be the value of a yearly salary loss.

³⁰¹ According to the Decree, every complainant can be exempted from paying any court fees if their gross monthly salary does not exceed double the national gross monthly salary (published by the Central Statistical Office) of the second year prior to the time of i) making the claim, ii) the termination of the employment, if the claim concerns the termination of employment, iii) the delivery of a written statement on the dismissal of the employee by the employer, if the claim concerns unlawful dismissal, which is at the time of the writing HUF 659,900 (EUR 1956.72). 73/2009. Minister of Justice and Law Enforcement Decree 73/2009. (XII. 22.), available at: <https://net.jogtar.hu/jogszabaly?docid=a0900073.irm>.

³⁰² Amnesty International interviews with employment lawyers, January and February 2020.

³⁰³ Ibid.

eligibility based on the claimant's income is very low – only those can request it, whose income per person in the family does not exceed HUF 28,500 (EUR 84) per month, which hasn't changed since 1 January 2008.³⁰⁴ If the claimant loses the case they may still be obliged to cover the lawyer's fee.³⁰⁵ Employment law experts interviewed by Amnesty International also revealed that lawyers on the state-funded legal aid registry are not always competent to represent claimants in an employment case and win the suit.³⁰⁶

Those employees, however, who are members of the union and whose union offers legal representation in court, have a better chance to be compensated adequately if their case is successful, as they avoid the legal costs. But only 9% of the workforce in Hungary retains membership of a trade union.³⁰⁷ The so-called 'Jogpontok', a legal aid network, also assists employees with labour rights-related questions regardless of whether they are union members. However, this EU-funded network of nearly 150 legal aid offices working with employment lawyers and with a trade union and employer organizations cooperation framework, does not undertake legal representation in court.³⁰⁸ Also some NGOs offer legal advice to victims of gender-based discrimination and other women who have suffered rights violations.³⁰⁹

4.2.2 COURTS DO NOT CORRECTLY APPLY THE RULES ON BURDEN OF PROOF

By law, in discrimination cases, the burden of proof lies with the defendant, while the claimant "must render probable that... [they] suffered a disadvantage... [and that they] possessed any of the [protected] characteristics... at the time of the violation of [the] law".³¹⁰ However, rather frequently courts of first and second instance require claimants to prove that discrimination occurred and if they fail to do so, they rule in favour of the defendant.³¹¹ This occurs despite the guidance by the Supreme Court clarifying that courts also should follow the Equal Treatment Act regarding burden of proof in discrimination cases.³¹² Moreover, as the Working Group on the issue of discrimination against women in law and in practice found, discrimination against women in employment is usually not challenged as an independent cause of action in the court system.³¹³



A WOMEN DISCRIMINATED AGAINST WITH REGARD TO EQUAL PAY³¹⁴

In a 2014 case, a female employee claimed that upon returning from maternity/parental leave, she was discriminated against with regard to equal pay; the employer increased her basic salary to a lesser extent than that of a male colleague performing the same job. The court of first instance dismissed the case because the employee could not prove that she was discriminated against on the grounds of being a

³⁰⁴ The eligibility criteria are defined by the Government Decree no. 421/2017. (XII. 19.) on the Detailed Rules of Procedures regarding the Authorisation, Disbursement and Reimbursement of Allowances within the Framework of Legal Aid, at: <https://net.jogtar.hu/jogszabaly?docid=A1700421.KOR×hift=20200301> and also Government Offices, "Jogi segítségnyújtás és pártfogó ügyvédi képviselés", 5 March 2019, at: <http://www.kormanyhivatal.hu/hu/budapest/jarasok/jogi-segitsegnyujtas>. In case of a person without family, this monthly net income should not exceed HUF 42,750 (about EUR 122.51), to allow eligibility for the legal aid. For details, also see: <https://igazsagugyiinformaciok.kormany.hu/jogi-segitsegnyujtas>.

³⁰⁵ Section 11/B(1) of the Hungary, Act LXXX of 2003 on Legal Aid, 6 November 2003, Article 11/B(2). EC, *Country Report Hungary: Gender Equality, Hungary*, 2019, pp. 71.

³⁰⁶ Amnesty International interviews with employment lawyers and employment law experts, January and February 2020.

³⁰⁷ Friedrich-Ebert-Stiftung, *Ungarn Gewerkschaftsmonitor (Hungary Trade Union Monitor)*, February 2020, pp. 5., available at: <http://library.fes.de/pdf-files/id/gewerkschaftsmonitore/16075/2020-ungarn.pdf> and also Amnesty International interviews with trade union leaders, between September 2019 and January 2020.

³⁰⁸ Wolters Kluwer, "Idén is működik a JOGpontok jogsegély-szolgáltatása", 09 January 2020, available at: <https://jogaszvilag.hu/iden-is-mukodik-a-jogpontok-jogsegely-szolgáltatasa/> and also [Jogpontok.hu](http://jogpontok.hu). The work of this legal aid network was not examined during the current research; therefore, its effectiveness is not known. In the survey conducted by Amnesty International, only one person of the respondents mentioned that she turned to this network for legal advice.

³⁰⁹ For example: the civil society organizations Jól-Lét Alapítvány or Nők a Holnapért Alapítvány.

³¹⁰ Article 19 of the Equal Treatment Act and Hungarian Supreme Court (Kúria), Decision in Principle No. 22/2014. in Labour Law (22/2014. számú munkaügyi elvi döntés), at: <https://kuria-birosag.hu/hu/elvdont/222014-szamu-munkaugyi-elvi-dontes>.

³¹¹ Amnesty International interviews with employment lawyers and employment law experts, October 2019 and January-February 2020; and Zaccaria Márton Leó, *Az egyenlő bánásmód elvének érvényesülése a munkajog területén a magyar joggyakorlatban*, 2014, pp. 176-188. and 237.

³¹² Hungarian Supreme Court (Kúria), Summary Opinion, pp. 68., and also EC, *Country Report: Gender Equality, Hungary*, 2019, pp. 80., and also Supreme Court (Kúria) Decision in Principle No. 24/2018 in Labour Law, available at: <https://kuria-birosag.hu/hu/elvhat/242018-szamu-munkaugyi-elvi-hatarozat>.

³¹³ HRC, Report of the Working Group on the issue of discrimination against women, pp. 11.

³¹⁴ EC, *Country Report: Gender Equality, Hungary*, 2019, pp. 73. and the Kúria's opinion on the case Mfv. I. 10.630 / 2014/6.), Kúria, Summary Opinion, pp. 139.

mother, which was partly upheld by the court of second instance. The Supreme Court overturned the decision of the court of second instance, because the court did not correctly apply the rules on the burden of proof in discrimination cases. The Court pointed out that the employer must prove that it adhered to the rules on equal treatment and on equal pay for work of equal value. The Court also stated that in cases in which the employer fails to provide proper evidence, the claimant's claim must be upheld.

Employment lawyers and employment law experts consistently told Amnesty International that rendering probable that their client suffered a disadvantage is also very difficult – not only in front of the court, but also before the Equal Treatment Authority – as usually there is no written evidence of the motivation for the discrimination.³¹⁵ A good example is when a pregnant employee is dismissed during the probation period, as the employer can terminate the employment without notice and without giving any reason.³¹⁶

4.2.3 IMPOSED SANCTIONS ARE NOT DISSUASIVE ENOUGH AND CONTRARY TO EU LAW

Unlike the Equal Treatment Authority courts can impose sanctions that are supposed to compensate the harm suffered by victims of gender-based discrimination. A claimant can receive financial compensation, could be reinstated in their original job if the termination of the employment violated the principle of equal treatment, or could request the payment of a withdrawn wage or the wage difference.³¹⁷ In cases of discrimination not related to dismissal, the employer is liable to pay full damages to the employee.³¹⁸ However, those punishments are still not effective, proportionate and dissuasive enough, contrary to the requirements of EU Directive 2006/54/EC.

Section 18 of the Directive 2006/54/EC prescribes that “[a] compensation or reparation [for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex] may not be restricted by the fixing of a prior upper limit”, except in cases where the discrimination happened as a result of the refusal to taking an applicant's job application into consideration.³¹⁹ However, the Hungarian law contradicts the Directive by limiting the amount of compensation payable to the claimant to a maximum of twelve months' absentee pay, if the discrimination results from the unlawful termination of employment.³²⁰ This, however, often does not reflect the real wage of the victim, as the absentee pay is calculated from the basic salary plus performance-based salary and the regular wage supplements³²¹ but does not include overtime pay or commissions (or bonuses), which many individuals who receive a lower basic wage – such as those employed in commerce and tourism – receive.³²² Moreover, from the potential compensation for the lost income the court deducts any severance pay the claimant received when the employment terminated, and/or any money earned in the meantime (if the claimant found another job) or in the given situation expectedly could have earned.³²³ Considering the potential compensation and the incurring costs, it is often not worth the victim starting legal proceedings.³²⁴ The previous Labour Code in force until 6 January 2012, however, allowed for the employee to claim and receive the whole amount of lost income and any additional loss they suffered.³²⁵

³¹⁵ Amnesty International interviews with employment lawyers and employment law experts, October 2019 and January-February 2020.

³¹⁶ Section 79 of the Labour Code.

³¹⁷ Section 82 and 83 of the Labour Code.

³¹⁸ Section 167 of the Labour Code.

³¹⁹ Section 18 of Directive 2006/54/EC.

³²⁰ Section Article 83 of the Labour Code.

³²¹ Regular wage supplements are the shift premium, supplement for Sunday work, night shift supplement or wage supplement paid for on-call or stand-by duty that workers are entitled to, based on their contract. Section 151 of the Labour Code.

³²² Section 148 (1) of the Labour Code on the calculation of absentee pay says: it “shall be calculated based on the base wage in effect at the time when due, and on the performance-based wage and wage supplement paid for the last six calendar months (relevant period).” However, in order to include wage supplements in the calculation of absentee pay, there are additional criteria to be met. The number of working hours for which the employee qualified for payment of a particular wage supplement has to reach a certain threshold in the relevant period, as per Section 151 of the Labour Code.

³²³ Section 83(4) of the Labour Code.

³²⁴ Amnesty International interviews with employment lawyers, between January and February 2020.

³²⁵ Section 100 of the Labour Code.

4.2.4 RECENT CHANGES IN THE COURT SYSTEM

The Hungarian Parliament passed Act CXXVII of 2019³²⁶ on 17 December 2019, introducing changes to the judicial system that took effect as of 1 April 2020. An important change that impacts employment discrimination cases is the dismantling of administrative and labour courts on 31 March 2020. Their jurisdiction was succeeded by 20 regional courts, which had previously functioned as courts of second instance in employment lawsuits. Parties can now appeal to five regional appeal courts.³²⁷

All employment experts told Amnesty International that there is uncertainty around the transition into the new system and the future of employment discrimination cases, increasing the risk that asserting employee's rights in employment discrimination will be even more difficult, than before. As some interviewees explained, judges who will judge cases on second instance might not have up-to-date knowledge and experience in employment lawsuits. Therefore, applying the correct burden of proof and imposing appropriate, effective and dissuasive sanctions might prove even more challenging for the courts than it was in the previous court system, and thus more difficult for victims of gender-based discrimination to receive adequate remedies.³²⁸

Amnesty International learned that due to the current COVID-19 pandemic, training has been suspended and it is not clear whether or how judges new to the second instance employment lawsuits would receive any related and necessary training. Moreover, as a result of the current health emergency, an extraordinary 15 March-1 April 2020 judicial break was imposed. Remote hearings via an online platform are occurring but might not be an available option to some people who have an ongoing court case or are considering initiating a procedure.³²⁹ It is still uncertain when the usual in-person court sessions could restart, as well as, whether these could resume before the judicial break in the summer.

³²⁶ Act CXXVII of 2019 amending several pieces of legislation including that on courts, at: <https://mkogy.jogtar.hu/jogszabaly?docid=A1900127.TV>.

³²⁷ Section 197/A of Act CLXI of 2011 on Organization and Administration of Courts, available at: <https://net.jogtar.hu/jogszabaly?docid=A1100161.TV>.

³²⁸ Amnesty International interviews with employment lawyers and employment law experts, January and February 2020.

³²⁹ The extraordinary judicial break was ordered between 15 March and 1 April 2020, during which no preliminary hearings or court hearings were held, as 35.SZ/2020. (III. 15.) Resolution of the President of the National Judicial Office on the directorial and administrative tasks of the judiciary during the extraordinary judicial break, 15 March 2020, at: <https://birosag.hu/obh/hatarozat/35sz2020-iii-15-obhe-hatarozat-rendkivuli-itelkezesi-szunet-soran-ellatando-birosagi>. Since the end of the break, exceptional hearings in person with special arrangements can be held only in exceptional cases. See National Judicial Office, "Meggzunt a rendkivuli itelkezesi szunet a biróságokon", 3 April 2020, at: <https://birosag.hu/hirek/kategoria/birosagokrol/meggzunt-rendkivuli-itelkezesi-szunet-birosagokon>

5. CONCLUSIONS AND RECOMMENDATIONS

Gender-based discrimination against pregnant women and women with young children in employment is widespread across the different sectors in Hungary. One of the key reasons is the weak nature of certain aspects of the Hungarian employment law, including the Equal Treatment Act, the Labour Code and other laws regulating employment relationships,³³⁰ with several significant loopholes and the incomplete transposition of relevant international and regional human rights obligations into domestic law. This is compounded by the failure to effectively ensure that employers are aware of their legal obligations and the need to comply with them. At the same time, many of the measures introduced by the government in recent years have had a particular and disproportionate impact on women employees, especially those who have a low socio-economic status and/or who come from disadvantaged backgrounds.

Moreover, there are several legal and practical barriers to access to justice that hinder victims of gender-based discrimination to seek effective remedies. Those avenues, which are available to the victims, such as launching a complaint with the Equal Treatment Authority or making a claim to the court, often do not adequately compensate them for the damage suffered. This is particularly problematic with proceedings before the Authority, where if the complaint is upheld, fines are paid to the state rather than to the victim. Additionally, potential repercussions against employees who experience discrimination and seek justice further restrict their ability to exercise their right to effective remedies whilst also resulting in additional violations of their rights.

The state has not put in place any effective dissuasive measures to deter employers from gender-based discrimination or introduce potential incentives to encourage them to keep pregnant workers employed until, during and after their maternity leave. Moreover, the state urgently needs to take steps to change the widespread negative perception concerning expectant employees and employees with young children among employers and the wider society, as well as the need for men to play a more significant role in family life. It should do this in collaboration with civil society including trade unions and human rights organizations.

As Amnesty International concludes that Hungary is in violation of its international human rights obligations with respect to the employment rights of women, including the principle of non-discrimination and equal treatment, it recommends:

TO THE GOVERNMENT:

- Run awareness raising and sensitization campaigns backing structural reforms that promote the need for men to share household duties including childcare, thereby aiming to eliminate any form of harmful stereotyping of women resulting in their discrimination in the workplace.
- Regularly engage in social dialogue with social partners to address the problem of continuing gender-based discrimination and to promote equality between men and women, and flexible working arrangements, with the aim of enabling both men and women to combine family and work commitments.
- Amend Government Decree 86/2019. (IV. 23.), to grant competence to the Department for Employment of Government Offices to investigate complaints by individuals concerning their

³³⁰ See text box on the relevant legislation under Chapter 2, on page 24.

employers' failure to submit the necessary documentation to enable pregnant women to receive sick pay in case of high-risk pregnancy or in-work family benefits (infant-care and childcare subsidies).

TO THE MINISTRY OF INNOVATION AND TECHNOLOGY:

- Propose legislation to amend Section 6 of the Labour Code by explicitly spelling out what discrimination, including discrimination based on gender and family status, means.
- Encourage men to play a bigger role in household tasks and childcare by a) extending paternity leave to at least 10 working days and make it obligatory, as per the new EU directive on balancing work and family life, and b) making at least two months of the parental leave non-transferable and obligatory for the man in the household, and ensure it is adequately compensated.
- Propose legislation to revise provisions on paternity and parental leave to grant employment protection to fathers taking advantage of these leaves.
- Propose legislation to amend the Labour Code and relevant laws regulating employment by introducing an obligation to continued employment of women following the protected periods of maternity leave and parental leave, in order to protect female workers from unfair dismissal.
- Propose legislation to amend Article 61(3) of the Labour Code and relevant provisions of Act on Civil Servants of Public Service and of Act on the Legal Status of Public Servants to allow women and men to work part-time also covering 30 or 35 hours per week, including the opportunity for flexible working time until the child reaches the age of four (or six in case of three or more children).
- Incentivize companies to employ women with children and to introduce flexible working conditions, by a) reinstating the incentive that allows companies to employ two part-time staff in a full-time position with the benefit of not paying 'social contribution tax' for them, and b) eliminating the complete payment of social contribution for women in part-time or full-time positions for the first two years and keeping the 50% discount for that payment, but extending it to the full salary.
- Propose legislation to revise provisions of the Labour Code to allow employees undergoing treatment related to a human reproduction procedure to be exempted from the requirement of availability and from work duty during medical consultations related to the above treatment.
- Propose legislation that would require employers to publish information on the wages of men and women employees, that could help women returning to work after maternity leave to know how wages changed in their absence and request adjustments to her own salary accordingly.

TO THE MINISTRY OF HUMAN CAPACITIES:

- Raise the amount of sick pay for women with high-risk pregnancy for the first 15 days of their sick leave to 70% to reach the level of that for sickness, to be covered by the state (and not the employer).
- Propose legislation to revise Article 40(1) of Act on the Services of the Compulsory Health Insurance System, allowing pregnant women to receive infant-care and childcare subsidies if they had had insurance coverage for at least 365 days over a period of two years prior to the birth of their child, even if they might have lost the insurance coverage over 42 days before the birth due to the termination of their employment relations.
- Increase the monthly amounts of the universal maternity support allowance, family allowance and childcare allowance, which have not increased since 2008, to adequate levels, by ensuring that their yearly rise follows inflation.

TO THE MINISTRY OF JUSTICE:

- Improve access to legal remedies for employment discrimination by amending the rules for exemption from court fees to also fully or partly cover legal representation fees, according to a means-test.
- Propose legislation to increase the level of reparations that can be claimed in court.
- Propose legislation that clarifies in the Code of Civil Procedure that the reversed burden of proof in non-discrimination cases as described by the Equal Treatment Act also applies in court procedures.

TO THE PARLIAMENT:

- Strengthen the Equal Treatment Authority by increasing its yearly budget to undertake more intensive outreach, promotion and training activities, and to increase its legal personnel to be better able to investigate complaints.
- Improve the remedies for discrimination, for instance by giving the Equal Treatment Authority the power to award exemplary compensations to be paid to the claimant.
- Amend the Equal Treatment Act to require both public institutions and private companies to develop an equality plan with indicators and targets, with yearly reviews. Also amend the Act by extending the competence of the Equal Treatment Authority by not only allowing it to investigate whether employers have equality plans, but also whether they make any measurable progress towards equality and reach their targets.
- Amend the Equal Treatment Act to allow the Equal Treatment Authority to carry out *ex officio* procedures against all public organizations and also against private actors.
- Amend the Equal Treatment Act with provisions that oblige public and private employers to create trainings on equal treatment and the prohibition of discrimination, for staff members and specifically for managers, and ensure that all staff are familiar with these.
- Ratify the Workers with Family Responsibilities Convention, 1981 (No. 156) and the Termination of Employment Convention, 1982 (No. 158).

TO EMPLOYERS IN ALL SECTORS:

- Put in place an ongoing and proactive human rights due diligence process to identify, prevent, mitigate and account for the employers' impacts on human rights, and to take remedial action for any human rights abuses caused.
- Introduce equal opportunity plans, take steps to achieve their objectives and targets, and monitor compliance.
- Conduct obligatory equality, diversity and discrimination courses for every newcomer, in particular managers, including training on gender-based discrimination, and increased trainings for managers on this issue.
- Develop an effective, easy-to-understand and easily accessible complaint reporting procedure that is known to employees, and also safe and anonymous, thereby reducing the risk of retaliation against complainants that seek to effectively investigate and sanction gender-based discrimination issues and incidents.
- Develop policies on maternity and parental leave, ensure that employees know and can access them, employees know about any changes and provide opportunities to discuss those changes.
- Accommodate more flexible working conditions that meet the need of employees with childcare responsibilities and include these conditions in local collective working agreements.

TO THE PRESIDENT OF THE NATIONAL JUDICIAL OFFICE:

- Include trainings on gender equality and non-discrimination to all judges and employees of the courts in the training catalogue of the Hungarian Academy of Justice and make these obligatory for new staff members, with a refreshment every five years.
- Arrange compulsory trainings on employment law to those judges in second instance courts who will adjudicate employment lawsuits following the reorganization of the court system.
- Return to the previous years' practice of disaggregation of statistics on employment lawsuits (which included the disaggregation by year, by courts, type of lawsuits, e.g., termination of employment, and the number of discrimination cases within) and include information about the grounds of discrimination and the sex of the claimant, as well as about the type of the decision.

TO THE EQUAL TREATMENT AUTHORITY:

- Monitor and document cases where the claimant and defendant came to a friendly agreement, to mitigate against future discrimination incidents.

- Promote equal treatment and the prohibition of discrimination and raise awareness of the existence of these policies and related services more widely, for example by a) running trainings for staff of public institutions and for companies, b) helping public institutions and companies to create trainings for employees on these matters, and d) running awareness raising campaigns.

TO THE COUNCIL OF THE EUROPEAN UNION:

- Address substantive concerns regarding the right to equal treatment in the Article 7 framework.

TO THE EUROPEAN COMMISSION:

- Call on Hungary to bring its legislation into compliance with EU directives and launch infringement procedures for non-compliance, in particular:
 - As the Hungarian Labour Code is in contradiction to Section 18 of Directive 2006/54/EC by limiting the amount of compensation payable to the claimant to a maximum of twelve months' absentee pay, resulting from the unlawful termination of employment.
 - As the Hungarian Equal Treatment Act is in contradiction to Directive 2006/54/EC by allowing exceptions concerning direct discrimination and by not narrowing down the scope of the definition on indirect discrimination.
- Provide support to Hungary to promptly transpose the new Directive (EU) 2019/1158 on work-life balance for parents and carers into its legislation.

TO THE COUNCIL OF EUROPE:

- The Gender Equality Commission should support the Hungarian Government to implement the Council of Europe Gender Equality Strategy and provide support to the national, regional and local authorities to achieve measurable change on gender equality in Hungary.

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NO WORKING AROUND IT

GENDER-BASED DISCRIMINATION IN HUNGARIAN WORKPLACES

Although the law prohibits gender-based discrimination in Hungary, women continue to experience widespread discrimination on the grounds of their sex/gender and for being a mother both in the workplace and in the labour market more generally. This report examines the discrimination pregnant women and women with young children face in their workplace.

One of the key reasons for this widespread discrimination against women employees is the incomplete transposition of the relevant international and regional human rights obligations into domestic law. As well, laws regulating employment relationships and the law on equal treatment contain several significant loopholes that employers exploit, and in so doing, violate the rights of their employees. In addition, the Hungarian authorities have failed both to effectively ensure that employers are aware of their legal obligations and to reinforce employers' compliance with the law.

Besides the fact that employees are often not aware of their rights and the respective obligations of their employers, many women do not seek reparation for the harm they have suffered. While victims are often not familiar with potential avenues for remedies, many fear retaliations for reporting discrimination both internally to their employer and through external legal avenues. Moreover, there are several legal and practical barriers to access to justice that hinder victims of gender-based discrimination to seek effective remedies.